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Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

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JAN 17 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Policy and Rules Concerning the Interstate, Interexchange Marketplace;  
Implementation of Section 254(g) of the Communications Act of 1934, as Amended,  
CC Docket No. 96-61  
Number Resource Optimization, CC Docket No. 99-200

**Notice of *Ex Parte* Presentation**

Dear Ms. Salas:

On behalf of the American Samoa Telecommunications Authority ("ASTCA"), my colleague David L. Sieradzki and I met this morning with Diane Griffith Harmon, Cheryl Callahan, and Dennis Johnson of the Common Carrier Bureau. The discussion pertained to American Samoa's request to enter the North American Numbering Plan and have Numbering Plan Area code 684 assigned to American Samoa, and the Industry Numbering Committee's December 6, 2001 recommendation in support of that request.

I have attached documents that were distributed at the meeting.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, one original (with attachments) and three copies (with attachments) of this letter are being filed with your office. In addition, I am sending one copy of this notice to the FCC staff listed below. Please contact me with any additional questions.

Respectfully submitted,



Angela E. Giancarlo  
Counsel for American Samoa  
Telecommunications Authority

cc: Cheryl Callahan  
Diane Harmon  
Dennis Johnson

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

DA No. 97-1628

Policy and Rules Concerning the )  
Interstate, Interexchange Marketplace )  
Implementation of Section 254(g) of the )  
Communications Act of 1934, as amended )

CC Docket No. 96-61

MEMORANDUM OPINION AND ORDER

Adopted: July 30, 1997

Released: July 30, 1997

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we review plans submitted by MCI Telecommunications Corporation ("MCI"), PCI Communications, Inc. ("PCI"), AT&T, Sprint Communications Company, L.P. ("Sprint"), GTE Service Corporation ("GTE"), and IT&E Overseas, Inc. ("IT&E") for implementing rate integration for interstate interexchange services provided to, or from, Guam, the Commonwealth of the Northern Mariana Islands ("CNMI"), and American Samoa as required by the Commission in the *Rate Averaging and Rate Integration Report & Order*.<sup>1</sup> We find that Sprint's proposal does not achieve rate integration for service offered between Guam and CNMI, and between Puerto Rico and the U.S. Virgin Islands, and other U.S. points, and direct it to implement rate integration for such services by September 1, 1997. We find that IT&E's plan does not address private line services. We will require it to integrate private line services by September 1, 1997, and to file a plan by August 15, 1997, to do so. We find that GTE's submissions are inadequate to determine whether its offerings of prepaid calling cards and calling cards in Guam and CNMI are integrated with those offerings in other states. Accordingly, we require GTE to demonstrate that it has integrated rates for provision of these services in Guam and CNMI and to submit a

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<sup>1</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Report and Order, 11 FCC Rcd 9564 (1996) ("*Rate Averaging and Rate Integration Report and Order*" or the "*Report & Order*"), *aff'd on recon.*, First Memorandum Opinion and Order on Reconsideration, (rel. July 30, 1997) ("*First Reconsideration*"). In *GTE Service Corp. and Micronesian Telecommunications Corp v. FCC*, No. 97-1402 (D.C. Cir., decided July 16, 1997), the court denied an Emergency Petition for a Writ of Mandamus and an Emergency Motion for Partial Stay filed by GTE.

plan for doing so on or before August 15, 1997, and to implement rate integration for these services on or before September 1, 1997. We additionally set for comment issues concerning rate integration for services offered in American Samoa. We suspend the obligation of interexchange carriers (IXCs) to implement rate integration for American Samoa pending further order of the Common Carrier Bureau ("Bureau"). We further determine that no further steps are necessary to ensure implementation of rate integration for U.S. territories or possessions other than Guam, CNMI, and American Samoa.

## II. BACKGROUND

2. The Commission has a well-established policy of rate integration. Beginning in 1972, the Commission required interstate interexchange carriers to integrate the rates for the forty-eight contiguous states.<sup>2</sup> It extended this policy to Alaska, Hawaii, Puerto Rico, and the Virgin Islands in 1976,<sup>3</sup> requiring IXCs to lower their rates for services provided to, or from, these areas to levels comparable to those prevailing in the mainland for interexchange calls of similar distance, duration, and time of day.<sup>4</sup> Congress codified the Commission's rate integration policy in the Telecommunications Act of 1996 ("1996 Act")<sup>5</sup> by adding section 254(g) to the Communications Act of 1934, as amended (the "Act").<sup>6</sup> Section 254(g) states that "a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State."<sup>7</sup>

3. In the *Rate Averaging and Rate Integration Report & Order*, the Commission adopted a rate integration rule that mirrors the text of section 254(g). The Commission stated that this rule would incorporate its existing rate integration policy, and would apply to all interstate interexchange services, as defined in the Act, and to all providers of these services.<sup>8</sup>

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<sup>2</sup> *Establishment of Domestic Communications-Satellite Facilities*, Second Report and Order, 35 FCC 2d 844, 856-66 ¶¶35-36 (1972), *aff'd on recon.*, Memorandum Opinion and Order, 38 FCC 2d 665, 695-96 (1972), *aff'd sub nom.* Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975).

<sup>3</sup> *Integration of Rates and Services*, Memorandum Opinion, Order and Authorization, 61 FCC 2d 380, 392 (1976); *Integration of Rates and Services*, Memorandum Opinion, 62 FCC 2d 693, 695 (1976); *Application of GTE Corp. and Southern Pac. Co. for Consent to Transfer Control of Southern Pac. Satellite Co.*, Memorandum Opinion and Order, 94 FCC 2d 235, 262-63 (1983).

<sup>4</sup> *Referral of Questions from General Communications Inc. v. Alascom Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 6479, 6481 (1987).

<sup>5</sup> The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>6</sup> See S. Rep. No. 230, 104th Congress, 2d Sess. 1, 132 (1996) (Joint Explanatory Statement).

<sup>7</sup> See 47 U.S.C. § 254(g).

<sup>8</sup> *Report & Order* at 9588, ¶ 52.

Because the Act defines "state" to include all U.S. territories and possessions, the Commission concluded that providers of interexchange services to offshore points, including Guam, CNMI, and American Samoa, must do so on an integrated basis with services they provide to other states.<sup>9</sup> The Commission directed that IXC's implement these requirements by August 1, 1997. In order to permit it to review progress toward achieving rate integration, the Commission directed AT&T, GTE, MCI, Sprint, PCI, and IT&E to submit by February 1, 1997, preliminary plans to achieve rate integration, and final plans, including rates, by June 1, 1997.<sup>10</sup> The Commission delegated to the Chief, Common Carrier Bureau, authority to resolve any issues concerning these plans for rate integration for offshore points. Pursuant to the *Report & Order*, MCI, PCI, AT&T, GTE, Sprint, and IT&E filed initial and final rate integration plans on or before February 3, 1997 and June 2, 1997, respectively.

4. Concerning U.S. territories and possessions other than Guam, CNMI, and American Samoa, the *Report & Order* directed the Common Carrier Bureau to investigate service arrangements for these points to ensure compliance with Section 254(g) for these points by August 1, 1997.<sup>11</sup> These points are: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, and Wake Island.

### III. RATE INTEGRATION PLANS

5. AT&T proposes to comply with rate integration requirements by expanding its longest current mileage band to include calls to Guam and CNMI.<sup>12</sup> For services that have rate bands that name specific termination points, such as Puerto Rico and the US Virgin Islands, AT&T proposes to include Guam and CNMI in the most distant band.<sup>13</sup> AT&T also proposes to make calls to Guam and CNMI eligible for inclusion in all of AT&T's domestic optional calling plans and/or volume discount programs.<sup>14</sup> With respect to private line services, AT&T proposes to adopt the same rate-making methodology for services to these

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<sup>9</sup> *Id.* at 9596, ¶ 66.

<sup>10</sup> *Id.* at 9597, ¶ 68.

<sup>11</sup> *Id.* at 9598, ¶ 71.

<sup>12</sup> *Letter from E. E. Estey, AT&T, to Regina M. Keeney, Chief, Common Carrier Bureau, (Com. Car. Bur., June 2, 1997) ("AT&T Final Rate Plan") at 1.*

<sup>13</sup> AT&T Final Rate Plan at 2. The rate structure for Puerto Rico and the US Virgin Islands has traditionally been based on rate bands with each band including specific states. The bands and states within the bands generally cover distances that match appropriate mileage bands used for calls within the mainland and Hawaii and reflect the rates for those mileage bands.

<sup>14</sup> *Id.*

offshore points as for other domestic services.<sup>15</sup> AT&T does not propose to implement rate integration for American Samoa. It states that American Samoa has been invited to participate in the North American Numbering Plan ("NANP"), but has declined. AT&T states that it will be unable to integrate rates for American Samoa into its domestic systems for rating toll calls until American Samoa participates in the NANP.<sup>16</sup>

6. In its proposal, Sprint states that it will integrate Guam and CNMI into its existing Dial-1 interstate interexchange time, time of day, and distance sensitive rate structure by adding two additional mileage bands.<sup>17</sup> Sprint states that these rates will apply to calls made between the U.S. Mainland and Guam, and between the U.S. Mainland and the CNMI, irrespective of whether the call originates in Guam/CNMI or on the U.S. Mainland.<sup>18</sup> Sprint also states that "calls between Guam and the CNMI will not be integrated into the Dial 1 rate structure until certain facilities issues involving the CNMI are resolved."<sup>19</sup> Sprint asserts that access charges of the Micronesian Telephone Company (MTC), the incumbent local exchange carrier in the CNMI, are considerably higher than the rates which the Guam Telephone Authority is likely to charge as a member of the National Exchange Carrier Association, and that the lease rates which MTC has offered for capacity on the Guam-CNMI fiber cable are also higher than Sprint anticipated.<sup>20</sup>

7. GTE proposes to introduce a distance-sensitive rate schedule. GTE states that its proposed schedule will ensure that a customer in one state will pay the same rate as a customer in another state for calls of the same distance (e.g., the rate for a call in mileage band 0-3500 will be the same regardless of the originating point of the call).<sup>21</sup> GTE states that it will keep the same Initial/Additional Minute/Peak and Off Peak Periods as the existing structure.<sup>22</sup>

8. PCI states that it will achieve rate integration by using postalized rates for its

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at n.3.

<sup>17</sup> *Letter from Kent Y. Nakamura, Sprint Communications Company, L.P., to Regina M. Keeney, Chief, Common Carrier Bureau, (Com. Car. Bur., June 2, 1997) ("Sprint Final Rate Plan") at 1.*

<sup>18</sup> *Sprint Final Rate Plan at 2.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Letter from F. Gordon Maxson, GTE Service Corporation, to Regina M. Keeney, Chief, Common Carrier Bureau, (Com. Car. Bur., June 2, 1997) ("GTE Final Rate Plan").*

<sup>22</sup> *Id.*

interstate interexchange services offered in Guam and the CNMI.<sup>23</sup> Its proposed plan will offer rates that are uniform for Guam and CNMI subscribers for service between Guam, CNMI, and other domestic points.<sup>24</sup> PCI states that it will continue to offer optional calling plans, discounts and other promotional offerings to its subscribers on Guam and CNMI on the same terms and conditions, without regard to geographic location.<sup>25</sup>

9. IT&E, an IXC that provides outgoing interstate interexchange service from Guam and CNMI to other U.S. points, states that it will eliminate any differential between rates charged to subscribers on Guam and rates charged to subscribers on CNMI for domestic interstate interexchange services by charging postalized rates for calls to the US Mainland.<sup>26</sup> IT&E also states that it will offer separate, different rates for calls from Guam and the CNMI to other U.S. offshore locations, such as Alaska, Puerto Rico, the Virgin Islands, and American Samoa, that vary based on the location to which the call is terminated.<sup>27</sup> The rate for calls to a specific location will be the same for its subscribers regardless of whether the call originates in Guam or CNMI. It contends that this is not prohibited by the Commission's rules because, according to IT&E, the rules only prohibit charging different rates based on the geographic location of the subscriber.<sup>28</sup> IT&E also states that it reserves the right to offer temporary promotions and private line services on different terms and conditions to different groups of subscribers.<sup>29</sup> IT&E states that it plans to discontinue its 800/888 "paid" access service.<sup>30</sup> The plan states that IT&E's rates from Guam to CNMI will be the same as the rates from CNMI to Guam.<sup>31</sup>

10. MCI states that it will move Guam and CNMI from its international rate schedule to its domestic rate schedule, and states that it will implement rate integration by treating Guam and CNMI in a manner consistent with the current treatment accorded Puerto

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<sup>23</sup> Letter from Eric Fishman, on behalf of PCI Communications, Inc. to Regina M. Keeney, Chief, Common Carrier Bureau, (Com. Car. Bur., May 30, 1997) ("PCI Final Rate Plan") at 1.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.*

<sup>26</sup> Letter from Margaret L. Tobey, and Phuong N. Pham, on behalf of IT&E to Regina M. Keeney, Chief, Common Carrier Bureau, (Com. Car. Bur., June 2, 1997) ("IT&E Final Rate Plan") at 1-2.

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 2-3.

<sup>31</sup> *Id.* at Attachment 1.

Rico and the U.S. Virgin Islands.<sup>32</sup> It submitted proposed rates for its interstate interexchange services offered in CNMI and Guam. MCI states that it does not propose to integrate services to American Samoa because American Samoa has stated that it does not want rate integration and has repudiated any rights under section 254(g).<sup>33</sup>

#### IV. COMMENTS

11. CNMI contends that Sprint's proposal disregards the clear language of the *Report & Order*, and of the 1996 Act, because Sprint's proposed rate schedule does not integrate its rates for interexchange calls between CNMI and Guam.<sup>34</sup> CNMI rejects Sprint's argument that higher costs justify its exclusion of these charges from its integrated rates offered to mainland areas, and notes that the Commission has previously rejected this argument.<sup>35</sup> Furthermore, CNMI argues that Sprint's refusal to integrate its rates between CNMI and Guam constitutes a discriminatory practice in violation of section 202(a) of the Act since Sprint has integrated its rates for calls between other offshore points such as Puerto Rico and the US Virgin Islands.<sup>36</sup>

12. In its response to CNMI, Sprint argues that the *Report & Order* does not require Sprint's other subscribers, through rate integration, to subsidize calls between Guam and CNMI.<sup>37</sup> According to Sprint, if required to integrate Dial-1 rates for calls between Guam and CNMI, it will lose money on every call, due in part to high access rates allegedly charged by MTC.<sup>38</sup> Sprint contends that, in a competitive environment, averaging is only required when costs of serving certain customers or routes are not widely divergent and when competition permits such averaging.<sup>39</sup> Sprint contends that the Commission has previously determined that it was not in the public interest to impose upon a large group of subscribers

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<sup>32</sup> Letter from Donald J. Elardo, MCI, to Regina M. Keeney, Chief, Common Carrier Bureau, (Com. Car. Bur., May 30, 1997) ("MCI Final Rate Plan").

<sup>33</sup> Letter from Donald J. Elardo, MCI, to William F. Caton, Acting Secretary, Federal Communications Commission, (July 15, 1997), ("MCI Ex Parte Letter") at 1-2.

<sup>34</sup> See Comments of the Commonwealth of the Northern Mariana Islands ("CNMI Comments") at 1-3.

<sup>35</sup> *Id.* at 3-4 (citing *Report & Order* at 9588-9599 ¶¶ 52-53).

<sup>36</sup> *Id.* at 4.

<sup>37</sup> Opposition of Sprint at 1-2.

<sup>38</sup> Opposition of Sprint at 2.

<sup>39</sup> *Id.* at 5.

substantial expenses benefitting only a specialized group of users.<sup>40</sup> Sprint urges an investigation into allegedly excessive access charges assessed by MTC.<sup>41</sup> Finally, Sprint cautions that a requirement that carriers provide services at rates that do not recover expenses will lead to poor service, withdrawal from the market, and less competition, contrary to the results that rate integration is intended to produce.<sup>42</sup>

13. The State of Alaska ("Alaska") argues that Sprint's position would effectively eliminate rate averaging and rate integration, and would contradict the clear intent of Congress when it enacted Section 254(g). Alaska asserts that high cost areas are precisely the locations that Congress sought to protect in enacting section 254(g).<sup>43</sup> According to Alaska, Congress decided that interexchange services are sufficiently important that they must be provided at averaged and integrated rates even in markets where competition exists.<sup>44</sup>

14. CNMI alleges that GTE's rate integration plan fails to include rates for additional services, including calling card services, private line services, and operator-assisted calls.<sup>45</sup> CNMI requests that the Commission take any action necessary to ensure full compliance by GTE with the *Report & Order*.<sup>46</sup> In a letter response to CNMI's comments, GTE states that its affiliates will assess on domestic interexchange switched message telecommunications traffic a uniform surcharge of \$4.50 for operator assisted person-to-person calls and \$2.20 for all other operator handled traffic.<sup>47</sup> With respect to private line services, GTE contends that the Commission's *Report & Order* requires only that carriers integrate their services by using the same ratemaking methodology and rate structure.<sup>48</sup> With respect to credit card calls, GTE states only that prepaid calling card offerings vary and are not tied to

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<sup>40</sup> *Id.* at 6 (citing *Offshore Telephone Company*, 3 FCC Rcd 4137 (1988) (refusing to allow the Offshore Telephone Company (OTC) to join NECA because OTC's high costs of providing service to offshore oil rigs in the Gulf of Mexico would be paid by the nation's long distance callers generally)).

<sup>41</sup> *Id.* at 7.

<sup>42</sup> *Id.* at 8.

<sup>43</sup> *Letter from Robert M. Halperin, on behalf of the State of Alaska, to the Honorable Reed E. Hundt, Chairman, Federal Communications Commission* (July 2, 1997) ("Alaska Comments").

<sup>44</sup> *Id.* at 2-3.

<sup>45</sup> *Id.* at 9-11.

<sup>46</sup> *Id.* at 13.

<sup>47</sup> *Letter from F. Gordon Maxson, GTE, to William F. Caton, Acting Secretary, Federal Communications Commission* (July 14, 1997) ("GTE Ex Parte Letter") at 1.

<sup>48</sup> *Id.*



basic rates.<sup>49</sup>

15. CNMI also points out that none of the carriers proposes to integrate its rates for calls to, or from, American Samoa.<sup>50</sup> CNMI states that the *Report and Order* requires that rates for services provided to American Samoa be integrated. CNMI adds that this requirement cannot be repudiated by American Samoa, as suggested by MCI, and does not carry the precondition of participation in the North American Numbering Plan ("NANP"), as suggested by AT&T.<sup>51</sup> CNMI requests that the Commission ensure that all carriers providing service from CNMI to American Samoa include American Samoa within their integrated, domestic rates.<sup>52</sup>

16. On June 26, 1997, American Samoa Acting Governor Togiola T.A. Tulafono asked that the FCC provide American Samoa sixty days in which to formulate a position on rate integration.<sup>53</sup> On July 1, 1997, Governor Tauese P.F. Sunia submitted a letter stating that the government of American Samoa supports rate integration and believes that the benefits of rate integration have been achieved with respect to outbound calls.<sup>54</sup> The letter states that, contrary to the representations made by some carriers, the government of American Samoa does not see any obstacle to the implementation of rate integration for inbound calls to American Samoa. The letter states that American Samoa is in the process of discussing this matter with carriers, and that it is confident that a mutually satisfactory resolution will be reached.<sup>55</sup>

17. MCI requests additional time to address new, complex issues regarding implementation of rate integration for calls terminating in American Samoa.<sup>56</sup> MCI states that it relied on previous statements by the American Samoan government that it did not wish to be affected by this proceeding.<sup>57</sup> MCI further states that, given American Samoa's intention

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 5.

<sup>51</sup> *Id.* at 5-6.

<sup>52</sup> *Id.* at 8.

<sup>53</sup> *Letter from Togiola T.A. Tulafono, Acting Governor of American Samoa, to the Honorable Reed E. Hundt, Chairman, Federal Communications Commission, (June 26, 1997).*

<sup>54</sup> *Letter from Tauese P.F. Sunia, Governor of American Samoa, to the Honorable Reed E. Hundt, Chairman, Federal Communications Commission, (July 1, 1997) at 1-2.*

<sup>55</sup> *Id.*

<sup>56</sup> MCI Ex Parte Letter at 1-2.

<sup>57</sup> *Id.* at 1.

to continue to operate outside the North American Numbering Plan, which means that inbound calls are routed as international traffic, MCI and other carriers are faced with a need to implement substantial changes to their systems to accommodate rate integration for American Samoa.<sup>58</sup> GTE states its willingness to cooperate with American Samoa to establish rate integration for American Samoa.<sup>59</sup>

## VI. DISCUSSION

18. Sprint proposes not to integrate rates for calls between Guam and the CNMI with its rate structure for service offered to other states because of allegedly higher costs of service between Guam and CNMI. As recently noted by the Commission, however, higher costs do not generally justify a departure from the rate integration requirements of section 254(g).<sup>60</sup> Moreover, the Commission, in the *First Reconsideration*, rejected the identical claim by IT&E that it should not be required to offer services between Guam and CNMI on a rate integrated basis.<sup>61</sup> Therefore, Sprint's proposal not to integrate rates for calls between Guam and CNMI violates the statute and the Commission's rules. Accordingly, we direct Sprint to achieve rate integration for calls between Guam and CNMI on or before September 1, 1997, and to file a plan for doing so, with proposed rates, by August 15, 1997. In addition, we note that Sprint's rates for service between Puerto Rico and the U.S. Virgin Islands and other points in the United States are not presently rate integrated, and its plan does not propose integration of these services. We direct Sprint to integrate its rates for services provided to, and from, these points on or before September 1, 1997, and to file a plan for doing so, with proposed rates, by August 15, 1997. If it has already integrated rates for these services before August 15, 1997, it may, on that date, submit a description and justification explaining that it has done so.

19. We reject IT&E's view that it may implement a uniform rate schedule containing rates that vary based on the location to which a call is terminated.<sup>62</sup> This approach would permit a carrier to charge its subscribers in every state a higher rate for calls destined for one state than the carrier assessed for calls of the same distance and duration to other states. This is directly contrary to the goals of rate integration for offshore points<sup>63</sup> and would permit carriers to charge excessive rates for calls to specific offshore points. In the Joint Explanatory Statement, Congressional conferees made clear that section 254(g) was intended

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<sup>58</sup> *Id.* at 1.

<sup>59</sup> GTE Ex Parte Letter at 1.

<sup>60</sup> *Report & Order* at 9589, ¶ 53.

<sup>61</sup> *First Reconsideration* at ¶¶ 32-33.

<sup>62</sup> IT&E Final Rate Plan at 2.

<sup>63</sup> *See Report & Order* at 9586, ¶ 47.

to incorporate the Commission's existing rate integration policy.<sup>64</sup> The Commission's rate integration policy historically has required IXCs to incorporate individual states, such as Alaska, into an entire nationwide rate regime, and not just into an originating rate regime. Therefore, we conclude that IT&E's view violates the Commission's rate integration policy and section 254(g). IT&E has not explained or supported its view that it may offer temporary promotions and private line services on different terms and conditions to different groups of subscribers. Nor has it specifically proposed any such offerings. Nor does IT&E's plan address whether it will provide private line services on a rate integrated basis. Accordingly, we will not directly address this view. We note, however, that specific offerings must comply with section 254(g) and the Commission's rules. Moreover, the Commission determined in the *Report & Order* that, to the extent a provider of interexchange service offers optional calling plans, contract tariffs, discounts, promotions and private line services to its subscribers in one area, it must use the same ratemaking methodology and rate structure when offering those services to its subscribers in each other area where it provides services.<sup>65</sup> Because IT&E's plan does not address private line services, we will require it to integrate private line services by September 1, 1997, and to file a plan by August 15, 1997 to do so.

20. As noted, the rate integration requirements of section 254(g) apply to all interstate interexchange services.<sup>66</sup> Therefore, carriers are required to integrate interstate interexchange offerings of private line services, operator services, prepaid calling card services, and calling card offerings.<sup>67</sup> In order to offer these services on an integrated basis, carriers must use the same rate structure and rate making methodology in every state in which they offer these services.<sup>68</sup> Based on the current record, we find that GTE's proposal satisfies the Commission's rate integration requirements for operator-handled calls and private line services. GTE's submissions are inadequate, however, to determine whether its offerings of prepaid calling cards and calling cards in Guam and CNMI are integrated with those offerings in other states. Accordingly, we require GTE to demonstrate that it has integrated rates for provision of these services to Guam and CNMI and to submit a plan for doing so on or before August 15, 1997, and to implement rate integration for these services on or before September 1, 1997.

21. Based in part on continuing discussions over the last year between industry and the government of American Samoa regarding the implementation of rate integration in the Western Pacific, none of the carriers proposes specific rate integration steps for American Samoa. In the past few weeks, however, the government of American Samoa has indicated

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<sup>64</sup> S. Rep. No. 230, 104th Congress, 2d Sess. 1, 132 (1996) (Joint Explanatory Statement).

<sup>65</sup> *Report & Order* at 9596-9597, ¶ 67.

<sup>66</sup> *Id.* at 9588-9599, ¶ 52.

<sup>67</sup> *Id.* at 9596-9597, ¶ 67.

<sup>68</sup> *Id.* at 9598-9599, ¶ 52.

its active interest in implementing rate integration and has continued discussions with the relevant carriers toward that end. We note that there are several measures that could be implemented in American Samoa that likely would facilitate the ability of interexchange carriers to integrate their service offerings to American Samoa with their interstate offerings to the mainland and other offshore points. These steps include participation in the North American Numbering Plan, provision of access services to IXC's on a basis comparable to that of LEC's in other parts of the U.S. (such as by offering National Exchange Carrier Association access rates), and provision of Feature Group D service if requested by IXC's.<sup>69</sup> Thus, inclusion of American Samoa in the NANP would help carriers integrate American Samoa into their nationwide service plans, billing systems, and switching mechanisms. Implementation of Feature Group D service would provide subscribers with high-quality equal access to providers of interexchange service serving American Samoa. Provision of access services by American Samoa to interexchange carriers on a basis more comparable to such services provided in other parts of the U.S. could help interexchange carriers set rates at integrated levels. Further, these measures could promote the provision of competitive services to American Samoa and stimulate introduction of new services.

22. The record, however, does not indicate the extent to which the government of American Samoa, as the provider of local service and of interconnection to interstate long distance service providers in American Samoa, may plan to take any of these steps. In order to make further determinations on these issues on the basis of a more complete record, we are establishing a comment period for the purpose of determining the extent to which these and other steps should be taken to integrate American Samoa into the pattern for provision of interstate communications services that exists elsewhere in the U.S. We encourage American Samoa to submit a complete plan for taking these and any other measures that could help to integrate provision of communications services to American Samoa. On the basis of the resulting record, we will determine whether any regulatory action is necessary. The Commission has jurisdiction over provision of interstate communication to, and from, American Samoa, including those provided by the government of American Samoa.<sup>70</sup> Pending resolution of this issue, we temporarily suspend the obligation of carriers to provide services on an integrated basis to American Samoa.

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<sup>69</sup> See, e.g., *IT&E Overseas, Inc. and PCI Communications, Inc. Petition for Emergency Relief and Expedited Declaratory Ruling*, Memorandum Opinion and Order, 7 FCC Rcd 4023 (1992) ("Show Cause Order") (Commission declared it had exclusive jurisdiction over all interstate and foreign common carrier communications in Guam, and ordered the Guam Telephone Authority to show cause why it should not be required to file interstate and foreign service tariffs with the Commission); see also *Guam Telephone Authority Petition for Declaratory Ruling to Participate in the National Exchange Carrier Association, Inc.*, Memorandum Opinion and Order, DA 97-1007, (rel. May 12, 1997) (GTA efforts to comply with *Show Cause Order* include filing of federal access tariffs, establishment of protocols to measure interexchange carrier usage, application to participate in North American Numbering Plan, application of a study area in Guam, and petition for authority to join NECA).

<sup>70</sup> See *Show Cause Order* at 4023-4025, ¶¶ 5-12.

23. Pursuant to the Commission's direction in the *Report & Order*, the Bureau has conducted an informal investigation of U.S. territories and possessions to assure compliance with rate integration requirements for these points by August 1, 1997. As indicated, these other U.S. territories and possessions are Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, and Wake Island.<sup>71</sup> Of these, only Wake Island, Johnston Atoll, Midway Atoll, and Palmyra Atoll are permanently inhabited.<sup>72</sup> Communications services to Wake Island and Johnston Atoll are provided pursuant to special arrangements by U.S. military authorities under which callers on these points pay rates as if calls were placed from Hawaii.<sup>73</sup> Similarly, callers to those points are charged as if the calls terminated in Hawaii. Section 254(g) does not require termination or revision of these types of special military communications arrangements. Palmyra Island maintains a permanent population of fewer than four persons.<sup>74</sup> There are currently no permanent telecommunications facilities on the island.<sup>75</sup> Midway Atoll has recently been converted from a naval installation to a national wildlife refuge administered by the U.S. Fish and Wildlife Service.<sup>76</sup> The U.S. Fish and Wildlife Service has entered into an operating agreement with Midway Phoenix Corporation ("Midway Phoenix") through which limited telecommunications services are provided to the island's employees and visitors. Reportedly, Midway Phoenix will operate a cellular system and customers will be charged flat rated per minute charges for calls within the island and to other U.S. points.<sup>77</sup> Midway Phoenix does not currently offer telecommunications services from any other points.<sup>78</sup> We require Midway Phoenix to comply with Section 254(g) with respect to any services offered from Midway and any other services it may offer in the future from other points. Accordingly, we conclude that no further steps are required with respect to these points in order to assure compliance with Section 254(g) by August 1, 1997.

## VII. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that Sprint SHALL SUBMIT by August 15,

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<sup>71</sup> See Memorandum from Jeremy Jennings, Competitive Pricing Division, Common Carrier Bureau to William F. Caton, Acting Secretary, Federal Communications Commission, dated July 29, 1997, at 1.

<sup>72</sup> *Id.* at 1-2.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 1.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 2.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

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1997, a plan to implement rate integration by September 1, 1997, for interstate interexchange services provided between Guam and CNMI, and for services provided between Puerto Rico and the U.S. Virgin Islands, and other U.S. points as discussed in ¶ 16.

25. IT IS FURTHER ORDERED that IT&E SHALL SUBMIT by August 15, 1997, a plan to integrate its offering of private line services by September 1, 1997.

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26. IT IS FURTHER ORDERED that GTE SHALL SUBMIT by August 15, 1997, a plan to integrate rates for provision of prepaid calling cards and calling cards in Guam and CNMI by September 1, 1997.

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27. IT IS FURTHER ORDERED that interexchange carriers providing interexchange service to, and from, American Samoa may submit comments on the issues discussed in ¶¶ 21-22 by August 18, 1997, and that American Samoa and other interested parties may submit responsive comments by September 5, 1997.

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28. IT IS FURTHER ORDERED that the obligation of interexchange carriers to implement rate integration for American Samoa IS TEMPORARILY SUSPENDED pending further order of the Common Carrier Bureau.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.  
A. Richard Metzger, Jr.  
Deputy Chief, Common Carrier Bureau

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
American Samoa Government and the	)	
American Samoa Telecommunications	)	
Authority	)	
	)	
Petition for Waivers and Declaratory	)	CC Docket No. 96-45
Rulings to Enable American Samoa to	)	AAD/USB File No. 98-41
Participate in the Universal Service High	)	
Cost Support Program and the National	)	
Exchange Carrier Association Pools and	)	
Tariffs	)	

ORDER

Adopted: June 9, 1999

Released: June 9, 1999

By the Chief, Accounting Policy Division:

I. INTRODUCTION

1. On February 6, 1998, the American Samoa Government and the American Samoa Telecommunications Authority (American Samoa Tel. or, collectively, American Samoa) filed a petition requesting waivers and declaratory rulings to enable American Samoa Tel. to participate in the universal service high cost support mechanisms and to become a member of the National Exchange Carriers Association (NECA).<sup>1</sup> The petitioners request a waiver of the provisions in Parts 36 and 69 of the Commission's rules that restrict application of those rules to incumbent local exchange carriers (LECs) and a waiver of sections 36.611 and 36.612 of the Commission's rules in order to enable American Samoa Tel. to receive high cost loop support based on forecasted or estimated costs. In addition, American Samoa seeks a waiver of the definition of "average schedule company" and certain other provisions in Part

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<sup>1</sup> Petition of the American Samoa Government and the American Samoa Telecommunications Authority for Waivers and Declaratory Rulings to Enable American Samoa to participate in the Universal Service High Cost Support Program and the National Exchange Carrier Association Pools and Tariffs (filed Feb. 6, 1998) (American Samoa petition). On March 3, 1997, the Universal Service Branch, Accounting and Audits Division released a public notice soliciting comments on the petition for declaratory ruling and waiver. Comments were filed by the NECA and American Samoa Telecom, LLC, on March 18, 1998. Reply comments were filed by American Samoa on March 30, 1998.

69 to enable American Samoa Tel. to participate as an average schedule company in NECA's access tariffs and pools and a waiver of the definition of "study area" in Part 36. In this Order, we grant in part and deny in part this petition, as explained below.

## II. BACKGROUND

2. In 1984, the Commission established high cost support mechanisms to promote the nationwide availability of telephone service at reasonable rates.<sup>2</sup> These mechanisms provide support by allowing incumbent LECs with higher than average local loop costs to allocate an additional portion of those costs to the interstate jurisdiction to be recovered from interstate revenues. This enables the state jurisdictions to establish lower local exchange rates in study areas receiving such assistance.<sup>3</sup>

3. In the *Universal Service Order* released on May 8, 1997, the Commission established new federal universal service support mechanisms consistent with the Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996 (1996 Act).<sup>4</sup> Pursuant to the *Universal Service Order*, support for providing service in a high cost area will be based upon the forward-looking economic cost of providing the supported services to that service area.<sup>5</sup> Non-rural incumbent LECs will begin receiving high cost support based on forward-looking costs on January 1, 2000.<sup>6</sup> Rural incumbent LECs will begin to receive support based on forward-looking costs no earlier than January 1, 2001.<sup>7</sup> Until an incumbent LEC receives high cost support based upon forward-looking costs, that incumbent LEC's support will continue to be based upon historical cost data, but will be provided through the federal mechanism rather than the interstate access charge rate structure.<sup>8</sup> In the *Universal Service Order*, the Commission also concluded that carriers in insular areas of the United States are eligible to participate in the federal universal service support

<sup>2</sup> See generally *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, 96 FCC 2d 781 (1984).

<sup>3</sup> *Id.*

<sup>4</sup> See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, at 8888-8951, paras. 199-325 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), appeal pending in *Texas Office of Public Utility Counsel v. FCC and USA*, No. 97-60421 (5th Cir. 1997).

<sup>5</sup> *Universal Service Order*, 12 FCC Rcd at 8898-8926, paras. 223-272.

<sup>6</sup> *Federal-State Joint Board on Universal Service, Access Charge Reform*, Seventh Report and Thirteenth Order on Reconsideration in CC Docket 96-45; Fourth Report and Order in CC Docket No. 96-262; and Further Notice of Proposed Rulemaking in CC Docket Nos. 96-45, 96-262, FCC 99-119 (rel. May 28, 1999).

<sup>7</sup> *Universal Service Order*, 12 FCC Rcd at 8889, paras. 204.

<sup>8</sup> See *Universal Service Order*, 12 FCC Rcd at 8926-47, paras. 273-318.



mechanisms.<sup>9</sup>

4. Local exchange service was provided in American Samoa until 1998 by a government agency, the American Samoa Office of Communications.<sup>10</sup> On January 8, 1998, the Governor of American Samoa created American Samoa Tel. by executive order to administer the telecommunications operations formerly run by the Office of Communications.<sup>11</sup> In its petition, American Samoa states that American Samoa Tel. qualifies as a "rural telephone company" under sections 3(37) and 251(f)(1) of the Act, because it has fewer than 50,000 access lines, and also states that its predecessor, the Office of Communications, was designated as an "eligible telecommunications carrier" pursuant to sections 214 and 254 of the Act.<sup>12</sup> Petitioners state further that, because neither American Samoa Tel. nor its predecessor have participated in NECA revenue pools or other pre-existing universal service mechanisms, the Commission's universal service rules prevent it from receiving high cost support.<sup>13</sup> American Samoa requests the waivers and declaratory rulings necessary to enable American Samoa Tel. to participate in the universal service support mechanisms for high cost areas and seeks certain waivers of the Commission's rules requiring the submission of historical cost data.

**A. Definition of Incumbent LEC and NECA Membership**

5. Section 251(h)(1) of the Act defines an incumbent LEC as a LEC that, with respect to an area: (1) provided telephone exchange service in such area on February 8, 1996, the date of enactment of the 1996 Act, and (2) was a member of NECA on February 8, 1996, or became such member's successor or assign.<sup>14</sup> The Commission's rules essentially adopt section 251(h)(1) of the Act's definition of incumbent LEC for purposes of determining

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<sup>9</sup> *Universal Service Order*, 12 FCC Rcd at 8997, para. 414 n.1064 citing 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services . . .") (emphasis added); Joint Explanatory Statement at 131. In the universal service proceeding, the Commission explicitly considered American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, Puerto Rico, and the U.S. Virgin Islands to be insular areas. *Universal Service Order*, 12 FCC Rcd at 8995-9001, paras. 410-23.

<sup>10</sup> The telephone network in American Samoa was originally constructed by the U.S. Navy and the U.S. Department of the Interior. See Executive Order No. 02-1998, attachment to American Samoa petition.

<sup>11</sup> American Samoa Tel. is a semi-autonomous government agency, governed by a Board of Directors who are appointed by the Governor. See *id.*

<sup>12</sup> See American Samoa petition at 4; 47 U.S.C. §§ 153(37), 214(e), 251(f)(1), 254.

<sup>13</sup> American Samoa petition at 6.

<sup>14</sup> 47 U.S.C. § 251(h)(1).

universal service support.<sup>15</sup> The Commission's high cost support rules calculate the amount of support provided to a carrier based on its status as either an incumbent LEC or a competitive eligible telecommunications carrier.<sup>16</sup> An incumbent LEC receives support according to particular calculations based on historical and projected cost data,<sup>17</sup> and a competitive eligible telecommunications carrier receives the same amount of support per customer that the incumbent LEC previously serving that customer received.<sup>18</sup> Carriers that do not meet the definition of an incumbent LEC, but that also do not serve customers formerly served by an incumbent LEC, have sought waivers of the incumbent LEC requirement for purposes of calculating universal service support. In addition, a LEC serving an insular area that did not meet the definition of incumbent LEC was designated an incumbent LEC by rule.

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6. *Incumbent LEC Waivers.* Pursuant to the Commission's waiver authority, the Accounting and Audits Division (the Division) of the Common Carrier Bureau (the Bureau) permitted carriers that do not meet the definition of incumbent LEC to receive universal service support. Specifically, the Division granted waivers to new telephone companies providing service in previously unserved areas, such as South Park Telephone Company (South Park) and Sandwich Isles Communications, Inc., (Sandwich Isles), that permitted these companies to begin receiving high cost loop support.<sup>19</sup> In granting these waivers, the Division waived the incumbent LEC requirements of parts 36 and 69 of the Commission's rules, and permitted South Park and Sandwich Isles to become members of NECA and participate in NECA pools and tariffs.<sup>20</sup> These waivers do not, however, affect the carriers' obligations

<sup>15</sup> See 47 C.F.R. §§ 51.5, 54.5.

<sup>16</sup> Part 54 of the Commission's rules defines a "competitive eligible telecommunications carrier" as "a carrier that meets the definition of an 'eligible telecommunications carrier' [under part 54] and does not meet the definition of an 'incumbent local exchange carrier' in § 51.5 . . . ." 47 C.F.R. § 54.5.

<sup>17</sup> See, e.g., 47 C.F.R. §§ 36.611, 54.301, 54.303. As noted above, once the Commission implements a forward-looking economic cost mechanism, carriers will no longer receive support based on historical and projected cost data submitted to the Administrator, but instead will receive support calculated by a forward-looking economic cost model. See *supra* para. 3.

<sup>18</sup> 47 C.F.R. § 54.307.

<sup>19</sup> *South Park Telephone Company, Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules*, Order, AAD 97-41, DA 97-2730, 13 FCC Rcd 198 (Acct. Aud. Div. 1997) (*South Park*); *Sandwich Isles Communications, Inc., Petition for Waiver of Section 36.611 of the Commission's Rules and request for Clarification*, Order, AAD 97-82, DA 98-166, 13 FCC Rcd 2407 (Acct. Aud. Div. 1998) (*Sandwich Isles*), application for review pending. See also *Wilderness Valley Telephone Company, Inc., Petition for Waiver of Sections 69.605(c) and 69.3(e)(11) of the Commission's Rules*, Order on Reconsideration, AAD 96-99, DA 98-603, 13 FCC Rcd 6573 (Acct. Aud. Div. rel. March 31, 1998) (*Wilderness Valley recon.*) (waiving the incumbent LEC requirement of Part 69 and permitting Wilderness Valley to participate in NECA pools and tariffs).

<sup>20</sup> See *South Park* at para. 12; *Sandwich Isles* at para. 15. High cost loop support for incumbent LECs is calculated by NECA from data submitted to NECA pursuant to section 36.611, which defines an incumbent LEC

under section 251 of the Act.<sup>21</sup>

7. *Incumbent LEC Rulemaking.* Section 251(h)(2) of the Act allows the Commission, by rule, to "provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of [section 251]."<sup>22</sup> Pursuant to section 251(h)(2), the Commission adopted a rule treating Guam Telephone Authority ("Guam Telephone") as an incumbent LEC for purposes of section 251.<sup>23</sup> The Commission declined to adopt the same rule with respect to a class or category of LECs situated similarly to Guam Telephone, however, because the record in that proceeding did not identify any members of such class or category.<sup>24</sup>

8. Prior to adoption of the rule treating Guam Telephone as an incumbent LEC, the Common Carrier Bureau granted Guam Telephone's request to join NECA.<sup>25</sup> In the *Guam NECA Order*, the Bureau found that Guam Telephone could join NECA because it had demonstrated that it is a telephone company providing exchange service and exchange access service and, therefore, is similar to the carriers that participate in NECA.<sup>26</sup> The Bureau found

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as a carrier that meets the definition of incumbent LEC in section 51.1 of the Commission's rules. See 47 C.F.R. § 36.611. Participation in NECA pools and tariffs is restricted in Part 69 to telephone companies or LECs that meet the definition of incumbent LEC in section 251(h) of the Act. See 47 C.F.R. § 69.2(hh).

<sup>21</sup> See *South Park*, 13 FCC Rcd at 203; *Sandwich Isles*, 13 FCC Rcd at 2413.

<sup>22</sup> 47 U.S.C. § 251(h)(2).

<sup>23</sup> *Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act*, Report and Order, CC Docket No. 97-134, FCC 98-163 (rel. July 20, 1998) (*Guam ILEC Order*). The Commission previously had determined that Guam Telephone Authority was not an incumbent LEC within the meaning of section 251(h) because it was not a member of NECA on February 8, 1998, and did not become a successor or assign of a NECA member. *Guam Public Utilities Commission, Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act, Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act*, Declaratory Ruling and Notice of Proposed Rulemaking, 12 FCC Rcd 6925 (1997) (*Guam NPRM*).

<sup>24</sup> *Guam ILEC Order* at para. 1.

<sup>25</sup> See *Guam Telephone Authority Petition for Declaratory Ruling to Participate in the National Exchange Carrier Association, Inc.*, CCB/CPD File No. 96-29, Memorandum Opinion and Order, DA 97-1007, 13 FCC Rcd 1440 (1997) (*Guam NECA Order*).

<sup>26</sup> *Guam NECA Order*, 13 FCC Rcd at 1446-47. In the *Guam NECA Order* the Bureau found that section 69.601(b) implicitly requires that NECA members must, at a minimum, be telephone companies and that such companies must provide the basic exchange service for which distribution of carrier common line (CCL) revenues would be justified. *Id.* (citing *Offshore Telephone Company Request to Participate in the National Exchange Carrier Association, Inc.*, 3 FCC Rcd 4137, as revised at 3 FCC Rcd 4513, 4516-17 (1988), *aff'd per curiam sub nom.* *Offshore Telephone Co. v. FCC*, 873 F.2d 408 (D.C. Cir. 1989)). At that time, section

that Guam Telephone's current federal access tariff demonstrated that it currently offers access services on Guam and that Guam Telephone provides local exchange services for which distribution to Guam Telephone of carrier common line (CCL) revenues would be justified.<sup>27</sup> The Bureau also noted that Guam Telephone's membership in NECA and its recently revised access charge rate would facilitate the ability of interstate, interexchange carriers to provide service to Guam at integrated rates in accordance with section 254(g) of the Act.<sup>28</sup>

## B. Study Area Waiver

9. A study area is a geographic segment of an incumbent LEC's telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service area within a state.<sup>29</sup> Study area boundaries are important primarily because incumbent LECs perform jurisdictional separations at the study area level. For jurisdictional separations purposes, the Commission froze all study area boundaries effective November 15, 1984.<sup>30</sup> The Commission took this action primarily to ensure that incumbent LECs do not set up high-cost exchanges within their service territories as separate study areas to maximize interstate cost allocations and payments from universal service support mechanisms.<sup>31</sup>

10. Study area waivers are required whenever a company seeks to create or reconfigure study areas except under three conditions: (a) a separately incorporated company is establishing a study area for a previously unserved area; (b) a company is combining

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69.2(hh) of the Commission's rules defined a telephone company as "a carrier that provides telephone exchange service as defined in section 3(r) [now section 3(47)] of the Communications Act of 1934." Section 69.2(hh) currently provides:

*Telephone Company or local exchange carrier as used in this part means an incumbent local exchange carrier as defined in section 251(h)(1) of the 1934 Act as amended by the 1996 Act.*

47 C.F.R. § 69.2(hh). Accordingly, under the commission's current rules, a carrier that does not meet the definition of incumbent LEC would need a waiver of the incumbent LEC provisions in part 69 in order to joining NECA.

<sup>27</sup> *Guam NECA Order*, 13 FCC Rcd at 1446.

<sup>28</sup> See 47 U.S.C. § 254(g).

<sup>29</sup> For purposes of this discussion, we will consider the term "state" to include a United States Territory.

<sup>30</sup> 47 C.F.R. Part 36 App. (defining "study area"). See MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Recommended Decision and Order*, 49 Fed. Reg. 48325 (1984) (*1984 Joint Board Recommended Decision*); *Decision and Order*, 50 Fed Reg. 939 (1985) (*1985 Order Adopting Recommendation*).

<sup>31</sup> *1984 Joint Board Recommended Decision*, at para. 66; *1985 Order Adopting Recommendation*, at paras. 1,5.

previously unserved territory with one of its existing study areas in the same state; and (c) a holding company is consolidating existing study areas in the same state.<sup>32</sup> When Guam Telephone requested a declaratory ruling allowing it to establish a study area for the first time, the Division found that the situation did not fall within the exceptions from the waiver requirements because the territory had been served by Guam Telephone since 1973.<sup>33</sup>

11. In evaluating petitions seeking a study area waiver, the Commission uses a three-pronged standard: (1) the change in study area boundaries must not adversely affect the high cost loop fund; (2) the state commission(s) having regulatory authority over the exchange(s) to be transferred must not object to the change; and (3) the public interest must support such a change.<sup>34</sup> In the *Guam Study Area Waiver Order*, the Division found that authorizing a new study area that merely encompasses Guam Telephone Authority's existing service area would not compromise the Commission's reasons for freezing the study area boundaries and that the three-pronged standard for study area waivers had been met.<sup>35</sup>

### C. Historical Cost and Average Schedule Rules

12. High cost loop support currently is calculated using data provided by incumbent LECs pursuant to the Commission's cost accounting and jurisdictional separations rules.<sup>36</sup> The amount of a carrier's high cost loop support is based on the relationship of its historical loop cost to the national average loop cost. In order to determine this relationship, approximately half of all incumbent LECs submit their historical loop cost data to NECA each year pursuant to part 36.611 and 36.612 of the Commission's rules.<sup>37</sup> Because the cost data is not submitted by carriers until seven months after the end of a calendar year, and because NECA requires time to analyze the data and make the necessary nationwide calculations of support, carriers generally do not receive high cost support based on these data until the beginning of the second calendar year after costs are incurred. The impact of this

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<sup>32</sup> See *Request for Clarification Filed by the National Exchange Carrier Association, Inc., and Petitions for Waivers Filed by Alaska Telephone Company, Ducor Telephone Company, and Kingsgate Telephone, Inc., Concerning the Definition of "Study Area" in the Part 36 Appendix-Glossary of the Commission's Rules*, AAD 95-173, AAD 96-29, AAD 96-51, Memorandum Opinion and Order, 11 FCC Rcd 8156, 8160 (Com. Carr. Bur. July 16, 1996).

<sup>33</sup> *Guam Telephone Authority, Petition for Declaratory Ruling*, Report and Order, AAD 97-27, DA 97-595 (Acct. Aud. Div. rel. March 21, 1997) (*Guam Study Area Waiver Order*).

<sup>34</sup> *Guam Study Area Waiver Order* at para. 3.

<sup>35</sup> *Id.* at para. 13.

<sup>36</sup> See 47 C.F.R. Parts 36, 69.

<sup>37</sup> Account data are submitted to the Administrator by each carrier's study area. See 47 C.F.R. § 36.611, 36.612.

rule is mitigated, however, by section 36.612 of the rules, which allows carriers to update on a quarterly basis the calendar year data that they submit to NECA on July 31 of each year.<sup>38</sup>

13. The remainder of incumbent LECs, known as "average schedule companies," are not required to perform jurisdictionally separated cost studies.<sup>39</sup> Average schedule treatment historically has been available to companies that are presumed, because of their small size, to lack the resources to justify a requirement that they perform separations and access charge cost studies to determine their compensation from interstate services.<sup>40</sup> NECA develops a schedule based on generalized industry data to reflect the costs of a typical small incumbent LEC and average schedule companies receive support based on these schedules.<sup>41</sup>

### III. DISCUSSION

14. Section 254(b)(3) of the Act establishes the principle that consumers in insular areas should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and available at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>42</sup> As explained in the Joint Explanatory statement, Congress intended that the Joint Board and the Commission would consider consumers in insular areas, such as the Pacific Island territories, when developing support mechanisms for consumer access to telecommunications and information services.<sup>43</sup>

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<sup>38</sup> See 47 C.F.R. § 36.612. If a carrier files a quarterly update, NECA recalculates the carrier's high cost support for the remainder of the year based on the updated data (e.g., data covering the last nine months of the previous calendar year and the first three months of the current calendar year), rather than the calendar year data submitted on July 31. Thus, the quarterly update provision allows carriers to receive support earlier than the beginning of the second calendar year after costs are incurred.

<sup>39</sup> Section 69.605(c) of the Commission's rules defines an average schedule company as "a telephone company that was participating in average schedule settlements on December 1, 1982." 47 C.F.R. § 69.605(c).

<sup>40</sup> Prior to the adoption of the Commission's access charge rules in 1984, incumbent LEC compensation arrangements were handled through private contractual agreements within the telephone industry. The industry's settlement mechanism based the amount of incumbent LEC compensation either on cost studies or average schedule formulas that were used to estimate an incumbent LEC's cost of service. To facilitate implementation of its access charge rules, the Commission incorporated a modified version of the industry's existing average schedule arrangement. *National Exchange Carrier Association, Inc. Proposed Modifications to the 1997 Interstate Average Schedule Formulas*, Order on Reconsideration and Order, AAD 97-2, DA 97-2710 at para. 3 (Comm. Carr. Bur. rel. Dec. 24, 1997); see also *Proposed MTS and WATS Market Structure*, Third Report and Order, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983).

<sup>41</sup> These average schedule companies may convert to "cost companies" and receive compensation from NECA based on their company-specific costs. Once they make this election, however, they cannot later resume average schedule status. See 47 C.F.R. § 69.605(c).

<sup>42</sup> 47 U.S.C. § 254(b)(3).

<sup>43</sup> Joint Explanatory Statement at 131.

Given these objectives, it would not be consistent with universal service goals to preclude carriers serving insular areas from participating in the high cost support mechanisms simply because they were not members of NECA on February 8, 1996.<sup>44</sup>

15. The Commission may waive any provision of its rules on its own motion, or on petition, if good cause therefor is shown.<sup>45</sup> A petitioner applying for a waiver must demonstrate that special circumstances warrant a deviation from the general rule, and that such a deviation will serve the public interest.<sup>46</sup> As explained below, we waive certain sections of the Commission's rules to enable American Samoa Tel. to participate in the federal high cost support programs.

**A. Definition of Incumbent LEC and NECA Membership**

16. American Samoa Tel. requests a waiver of the incumbent LEC requirement in sections 36.611 and 69.2 of the Commission's rules in order to participate in NECA tariffs and pools, citing *South Park* and *Sandwich Isles*.<sup>47</sup> In *South Park*, the Commission found that the "purpose of the incumbent LEC restriction in section 36.611 is to distinguish competitive LECs from incumbent LECs for purposes of calculating universal service support and not to impose interconnection requirements." Because *South Park* was the sole provider of service to the area and not a competitive LEC, the Division found that "the purposes underlying the incumbent LEC requirements in Parts 36 and 69 of the Commission's rules are not applicable to *South Park*'s request to receive high cost support and to participate in NECA."<sup>48</sup> American

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<sup>44</sup> The Pacific Island Territories have historically been treated as international destinations for purposes of telecommunications regulation, but telecommunications markets on the islands are currently undergoing major changes. *Universal Service Order*, 12 FCC Rcd at 8995, para. 412. Beginning July 1, 1997, the Commonwealth of the Northern Mariana Islands and Guam were included in the North American Numbering Plan (NANP) and shortly thereafter interexchange carriers serving those islands were required to integrate their rates with the rates for services that they provide to other states. American Samoa is the only U.S. territory or possession with more than *de minimis* interstate interexchange telecommunications traffic that originates or terminates in the fifty states or other U.S. territories or possessions that is not, or is not currently scheduled to be included in the NANP. *Id.* at 8996 & n. 1058. American Samoa Telecom asks that we resolve the issue of American Samoa Tel.'s participation in the NANP prior to acting on its petition. We note that American Samoa's rate integration plan is pending before the Commission and the issue of its participation in NANP will be addressed in that proceeding. See American Samoa Government's Proposed Rate Integration Plan for American Samoa, in CC Docket 96-61, *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, filed October 1, 1997.

<sup>45</sup> 47 C.F.R. § 1.3.

<sup>46</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 C.F.R. § 1.3.

<sup>47</sup> American Samoa petition at 9-10.

<sup>48</sup> *South Park* at para. 12.

Samoa claims that the underlying purposes of the incumbent LEC requirements in Part 36 and Part 69 are similarly not applicable, because American Samoa Tel. is the sole provider of local exchange and exchange access service in American Samoa and is not a competitive LEC.<sup>49</sup>

17. American Samoa Tel. is the sole provider of local exchange and exchange access service in American Samoa and not a competitive LEC, as was the case in *South Park*. We therefore find that the purposes underlying the incumbent LEC requirements in Parts 36 and 69 of the Commission's rules are not applicable to American Samoa's request to participate in the universal service high cost support mechanisms and to participate in NECA. We note that, as discussed above, calculation of universal service support in Part 54 of our rules also depends upon a carrier's status as either an incumbent LEC or a competitive eligible telecommunications carrier.<sup>50</sup> We find that the purpose of the incumbent LEC requirement in sections 54.301 and 54.303 of the Commission's rules, as is the case in section 36.611, is to distinguish incumbent LECs from competitive eligible telecommunications carriers for purposes on calculating universal service support. We therefore find that the purposes underlying the incumbent LEC requirements in Part 54 of the Commission's rules are not applicable to American Samoa's request to participate in the universal service high cost support mechanisms calculated pursuant to Part 54. Accordingly, we waive the incumbent LEC requirements in Parts 36, 54, and 69 of the Commission's rules to permit American Samoa to become a member of NECA, participate in NECA tariffs and pools, and participate in the universal service high cost support mechanisms. This waiver does not affect American Samoa Tel.'s obligations under section 251 of the Act.<sup>51</sup>

#### B. Study Area Waiver

18. Petitioners state that American Samoa has never been classified as a study area in the past and argue that "[i]n light of the need to have a designated 'study area' in order to calculate historical cost, a waiver of the definition is necessary to ensure that [American Samoa Tel.] may receive universal service for high cost loop support."<sup>52</sup>

19. We agree that a study area waiver is needed for American Samoa Tel. to

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<sup>49</sup> American Samoa petition at 10.

<sup>50</sup> See *supra* at para. 4; see also 47 C.F.R. §§ 54.301, 54.303, 54.307. Section 54.301 provides the method for calculating local switching support; section 54.303 provides the method for calculating long term support; and section 54.307 provides the method for calculating support to a competitive eligible telecommunications carrier.

<sup>51</sup> Although section 251(h)(2) would require a rulemaking to treat American Samoa as an incumbent LEC for purposes of section 251, as demonstrated by Commission precedent, the Division has delegated authority to waive the incumbent LEC requirements of parts 36 and 69 of the Commission's rules for purposes of enabling carriers to become NECA members.

<sup>52</sup> American Samoa petition at 13.



receive universal service high cost support. American Samoa Tel.'s situation does not fall within the exceptions from the waiver requirements, because the territory has been served by American Samoa Tel. for many years.<sup>53</sup> We find that a waiver is justified, because authorizing a new study area that merely encompasses American Samoa's existing service area would not compromise the Commission's reasons for freezing the study area boundaries.<sup>54</sup> Although this reasoning is similar to that the Division used in granting Guam Telephone Authority's study area waiver, as discussed above,<sup>55</sup> we do not find it necessary here to apply the same three-pronged test in the specific circumstances presented here. The *Guam Study Area Waiver Order* was issued prior to enactment of the 1996 Act, which provides that "[c]onsumers in all regions of the Nation, including . . . those in rural, *insular*, and high cost areas should have access to telecommunications and information services . . .".<sup>56</sup> In the *Universal Service Order*, the Commission concluded that carriers in insular areas of the United States are eligible to participate in the federal universal service support mechanisms.<sup>57</sup> We find it reasonable to assume that neither Congress nor the Commission intended that the study area freeze would prevent carriers serving insular areas from receiving universal service support. Accordingly, we find that granting American Samoa Tel.'s request for a study area waiver would not compromise the Commission's reasons for freezing the study area boundaries and is consistent with the directives in the 1996 Act.

### C. Historical Cost and Average Schedule Rules

20. Petitioners state that American Samoa Tel. has no historical loop cost information and request a waiver so that it can receive high cost loop support as of January 1, 1998.<sup>58</sup> American Samoa Tel. proposes to submit to NECA an estimate of historical costs and/or a rolling annualized average of current costs, which would be subject to quarterly true-up adjustments based on actual costs. NECA comments that this methodology is "administratively feasible" and supports American Samoa's request, noting that the "proposed

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<sup>53</sup> See *supra* para. 9. Two of the three exceptions require that the study area would include previously unserved areas. The third exception relates to consolidating existing study areas.

<sup>54</sup> *Guam Study Area Waiver Order* at para. 13.

<sup>55</sup> See *supra* para. 11.

<sup>56</sup> 47 U.S.C. § 254(b)(3) (emphasis added).

<sup>57</sup> *Universal Service Order*, 12 FCC Rcd at 8997, para. 414 n.1064 (citing 47 U.S.C. § 254(b)(3)); Joint Explanatory Statement at 131. In the universal service proceeding, the Commission explicitly considered American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, Puerto Rico, and the U.S. Virgin Islands to be insular areas. *Universal Service Order*, 12 FCC Rcd at 8995-9001, paras. 410-23.

<sup>58</sup> American Samoa petition at 11.

true-up mechanism will permit actual data to be incorporated as soon as possible."<sup>59</sup> American Samoa also requests permission to have the option of being treated as an average schedule company.<sup>60</sup>

21. *Average schedule treatment.* Section 69.605(c) of the Commission's rules defines an average schedule company as "a telephone company that was participating in average schedule settlements on December 1, 1982."<sup>61</sup> This definition of average schedule company essentially "grandfathered" existing average schedule incumbent LECs but allows neither the creation of new average schedule companies nor the conversion of cost-based carriers to average schedule settlement status, absent a waiver of the Commission's rules. The Commission has concluded that an unrestricted opportunity for cost companies to convert to average schedule status would likely operate to the detriment of interstate ratepayers because the conversion may result in inflated interstate revenue requirements.<sup>62</sup> An unrestricted opportunity for cost companies to convert to average schedule status also creates the possibility for "gaming" the universal service rules. For example, as a general rule, the Commission does not grant average schedule company status to a new company in a stand-alone study area because of the risk that a new company with lower than average costs would collect support as an average schedule company and then switch to cost settlement status when upgrade expenditures create higher than average costs.<sup>63</sup>

22. The special circumstances used to justify past waivers of section 69.605(c) fall

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<sup>59</sup> NECA comments at 5.

<sup>60</sup> Section 69.605(c) of the Commission's rules defines an average schedule company as "a telephone company that was participating in average schedule settlements on December 1, 1982." 47 C.F.R. § 69.605(c). American Samoa Tel. states that it "is seriously considering whether it should participate in NECA's pools as an average schedule company or as a 'cost-based' carrier" and that it "intends to work closely with NECA in this regard." American Samoa petition at 12. American Samoa seeks a waiver of the Commission's rules to enable American Samoa Tel. to participate in NECA's access tariffs and pools as an average schedule company if American Samoa Tel., "in consultation with NECA determines that the average schedule company basis is appropriate." *Id.* at 12-13. NECA does not comment on American Samoa's request to be treated as an average schedule company. See NECA comments.

<sup>61</sup> 47 C.F.R. § 69.605(c).

<sup>62</sup> See, e.g., NECA's Proposed Waiver of Section 69.605(c) of the Commission's Rules, *Memorandum Opinion and Order*, 2 FCC Rcd 3960 (1987) (5,000 Line Waiver Order).

<sup>63</sup> See *Petitions for Waivers filed by Alpine Communications et. al., Concerning Sections 61.41(c)(2), 69.3(e)(110), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, *Memorandum Opinion and Order*, AAD 96-94, DA 97-354, 12 FCC Rcd 2367, 2375 (Acct. Aud. Div. 1997) (*Alpine*) (denying request of carrier serving 6,818 access lines for average schedule status). In the case of an extremely small size company, however, the Commission has granted a newly-formed entity's request for average schedule status. *Wilderness Valley Telephone Company, Inc., Petition for Waiver of Sections 69.605(c) and 69.3(e)(11)*, *Order*, AAD 96-99, DA-98-379, 13 FCC Rcd 4511 (Acct. Aud. Div. 1998) (granting request for average schedule status to carrier serving between 32 and 75 access lines) (*Wilderness Valley*).

into three broad categories.<sup>64</sup> First, the Bureau has granted limited opportunities for exchange carriers serving 5,000 or fewer access lines to convert to average schedule settlements to deal with industry-wide changed circumstances.<sup>65</sup> Second, the Bureau has granted waivers to certain small exchange carriers that clearly lacked the resources to operate on a cost-study basis.<sup>66</sup> Third, to ensure a smooth settlement process, the Division has granted waivers to average schedule companies that have acquired another company, and allowed the combined companies to merge into one average schedule company.<sup>67</sup> We also note that, when the Division required average schedule companies to convert to cost settlements after certain acquisitions, we permitted the new combined study areas to use average schedule settlements, until the companies have performed the necessary cost studies to convert to cost settlements.<sup>68</sup>

23. We find that American Samoa has demonstrated none of the special circumstances the Commission has used to justify a waiver of section 69.605(c). With approximately 17,880 access lines,<sup>69</sup> American Samoa Tel. is larger than any individual carrier previously granted such waivers.<sup>70</sup> We note that the Bureau considered and denied a request to extend the opportunity to convert to average schedule status that had been given carriers

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<sup>64</sup> See *BPS Telephone Co. Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Memorandum Opinion and Order on Reconsideration, AAD 95-67, DA 97-1956, 12 FCC Rcd 13820, 13824-25 (Acct. Aud. Div. 1997).

<sup>65</sup> See *5,000 Line Waiver Order*; see also *Petitions Seeking Average Schedule Settlements for Affiliated Cost Companies with 5,000 or Fewer Access Lines*, Memorandum Opinion and Order, 3 FCC Rcd 6003 (Comm. Carr. Bur. 1988) (granting a "one time opportunity to all exchange carriers with fewer than 5,000 access lines" to elect average schedule settlements). Subsequently, the Bureau considered and denied a request to extend a similar opportunity to exchange carriers serving 10,000 or fewer access lines. NECA Revision of Section 69.605 of the Commission's Rules to Allow Small Cost Settlement Companies to Elect Average Schedule Settlement Status, Order, 11 FCC Rcd 16504 (Comm. Carr. Bur. 1996) (*10,000 Line Waiver Order*).

<sup>66</sup> See, e.g., *Papago Tribal Utility Authority Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Memorandum Opinion and Order, 2 FCC Rcd 6631 (Comm. Carr. Bur. 1987) (granting average schedule status to carrier serving fewer than 400 lines in a 700 square mile area); *National Utilities, Inc. and Beetles Telephone Co. Inc., Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Report and Order, 8 FCC Rcd 8723 (Comm. Carr. Bur. 1993) (granting average schedule status to carriers serving 2,350 lines from eleven exchanges, and 50 access lines from one exchange, respectively); *Wilderness Valley*, 13 FCC Rcd 4511.

<sup>67</sup> See, e.g., *Baltic Telecom Cooperative, Inc., Memorandum Opinion and Order*, 12 FCC Rcd 2433 (Acct. Aud. Div. 1997); *Alpine*, 12 FCC Rcd at 2374.

<sup>68</sup> See *Alpine*, 12 FCC Rcd at 2376.

<sup>69</sup> Letter from David L. Sieradzki, Counsel for American Samoa Tel., to Magalie Roman Salas, dated May 11, 1998.

<sup>70</sup> We note that there are larger average schedule companies, but these companies were average schedule companies on December 1, 1982. See *supra* para. 21.

serving 5,000 or fewer lines to carriers serving between 5,001 and 10,000 lines.<sup>71</sup> We understand, however, that American Samoa Tel. currently does not have historical cost data. Therefore, in order to enable American Samoa to participate in universal service support mechanisms and NECA pools and tariffs as soon as practicable, we will permit American Samoa Tel. to participate as an average schedule company beginning the effective date of this order, but require American Samoa Tel. to convert to a cost company no later than July 1, 2001. In addition, we waive the provisions of section 69.3 of the Commission's rules that require advance notification in order to participate, effective July 1, 1999, in NECA's common line, traffic sensitive, and end user tariffs and pools.<sup>72</sup>

24. *High cost loop support.* It has been long-standing Commission policy not to grant waivers of sections 36.611 and 36.612 of its rules.<sup>73</sup> The Bureau has granted waivers of these rule sections only in limited circumstances, namely to cover costs incurred by a carrier serving previously unserved areas.<sup>74</sup> In *Border to Border*, the Bureau granted a waiver to permit a LEC serving a previously unserved area to begin receiving high cost loop support after a year of operation based on a combination of current and projected cost data.<sup>75</sup> The Bureau found that "special circumstances" warranted a waiver so that the Commission's rules would not "have the unintended effect of discouraging service in a high cost area" and "frustrate the Commission['s] goal of promoting affordable service."<sup>76</sup> The Bureau allowed *Border to Border* to begin receiving high cost loop support on the effective date of its order, but declined to provide support for the previous year in which *Border to Border* had been providing service at affordable rates.<sup>77</sup> Based on this precedent, the Division adopted similar

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<sup>71</sup> See *10,000 Line Waiver Order*, 11 FCC Rcd 16504.

<sup>72</sup> 47 C.F.R. § 69.3(a).

<sup>73</sup> See *Fremont Telephone Company, Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules*, Order on Reconsideration, AAD 97-56, DA 98-2335 (Comm. Carr. Bur. rel. Nov. 23, 1998); *GVNW Inc. Petition for Declaration Ruling, or Alternatively, a Waiver of Section 36.612(a) of the Commission's Rules on USF Data Collection*, Order, 11 FCC Rcd 13915 (Comm. Carr. Bur. 1996); *TeleAlaska Inc., and TelHawaii Inc., Petition for Waiver of Sections 36.611, 36.612, and 61.41(c)(2) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 10309 (Acct. Aud. Div. 1997) (*TeleAlaska*).

<sup>74</sup> See *Border to Border Communications, Inc.*, Memorandum Opinion and Order, AAD 94-61, 10 FCC Rcd 5055 (Comm. Carr. Bur. 1995) (*Border to Border*); see also *South Park*, 13 FCC Rcd 198; *Sandwich Isles*, 13 FCC Rcd 2407.

<sup>75</sup> *Border to Border*, 10 FCC Rcd at 5057.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* The Bureau found that *Border to Border* had been providing residential service for more than a year at an affordable monthly rate of \$19.00 per loop. Because *Border to Border* could not show that its rates had discouraged customers from seeking service, the Bureau found that the rules had neither frustrated the

be eligible for universal service support.<sup>80</sup> The Commission also clarified the procedures to be used for Guam Tel. Authority, and any other insular carriers, that may not have historical cost studies on which to base the support amounts.<sup>81</sup> Specifically, the Commission determined that such carriers will receive support based on an estimate of the annual amount of their embedded costs and are required to submit verifiable embedded cost data to the Administrator.<sup>82</sup>

26. We conclude that we should grant the requested waiver of section 36.611, in part, to allow American Samoa Tel. to be eligible to begin receiving high cost loop support beginning July 1, 1999. As discussed above, because high cost loop support is based on historical data, carriers generally do not receive high cost support based on these data until the beginning of the second calendar year after costs are incurred, although the impact of this lag is mitigated by the rules allowing carriers to file quarterly updates.<sup>83</sup> In the *Universal Service Order*, the Commission noted that insular areas generally have subscribership levels significantly lower than the national average, "largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations."<sup>84</sup> We find that it would further the goals of promoting universal service in insular areas of the United States, to allow American Samoa Tel. to begin receiving high cost loop support without waiting for the lag period to elapse.<sup>85</sup> We find that the *Universal Service Order* supports the waivers granted herein permitting American Samoa Tel. to participate in the high cost support mechanisms and to begin receiving high cost loop support based on average schedule settlements, as discussed above, until verifiable embedded cost data is to be filed with the Administrator.

27. While not opposing petitioners' request for waiver of the historical cost rules, a wireless competitor to American Samoa Tel., American Samoa Telecom. LLC, submitted comments requesting that we require American Samoa Tel. to submit all cost information for

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<sup>80</sup> *Universal Service Order*, 12 FCC Rcd at 8947, para. 318. We note that insular areas have much lower subscribership rates than other parts of the United States. See *Universal Service Order*, 12 FCC Rcd at 8843, para. 121.

<sup>81</sup> *Universal Service Order*, 12 FCC Rcd at 8947, para. 318.

<sup>82</sup> *Universal Service Order*, 12 FCC Rcd at 8947, para. 318.

<sup>83</sup> See *supra* para. 12.

<sup>84</sup> *Universal Service Order*, 12 FCC Rcd at 8838-39, para. 112.

<sup>85</sup> Petitioners report that American Samoa Tel. charges a monthly subscriber rate of \$9.00 for single-party service and unlimited local calling. In addition, in January 1998, American Samoa Tel. implemented a Lifeline rate plan for low-income consumers, with a monthly rate of \$3.75 for local service. American Samoa's annual per capita income is \$3,309 and the median annual household income is \$16,114. More than eighty percent of households in American Samoa subscribe to telephone service provided by American Samoa Tel. American Samoa petition at 4.

procedures in *South Park* and *Sandwich Isles*, permitting these companies to begin receiving high cost loop support before their historical cost data became available by submitting data based on current and projected costs.<sup>78</sup>

25. Petitioners claim that certain language in the *Universal Service Order* entitled American Samoa Tel. to receive high cost loop support as of January 1, 1998, the effective date of the Commission's rules adopted in that Order.<sup>79</sup> In the *Universal Service Order*, the Commission determined that under the principles set forth in 1996 Act, carriers serving insular areas that had not been included in the previous universal service mechanism should

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Commission's goal of promoting the availability of telephone service at reasonable rates or disserved the public interest. The Bureau found, however, that in the future the rules would have the unintended effect of discouraging service. Specifically, Border to Border demonstrated that its average loop cost was well in excess of the rate it was allowed to charge by the state. Either the Texas Public Utilities Commission could allow Border to Border to raise rates substantially above current levels, which Border to Border predicted would result in effectively denying service, or Border to Border would choose to terminate service by the end of the year. The Commission found that such a likelihood could not be readily dismissed, considering the high average loop costs demonstrated by Border to Border. *Id.*

<sup>78</sup> South Park was permitted to submit forecasted costs to NECA in its section 36.611 data submissions and directed to provide to the Accounting and Audits Division its actual costs when these data become available, so that the Division can determine whether adjustments to the high cost loop support amounts are necessary. *South Park*, 13 FCC Rcd at 203. Sandwich Isles was permitted to submit to NECA a rolling annualized average of current costs, subject to quarterly true-up adjustments based on actual costs. *Sandwich Isles*, 13 FCC Rcd at 2409, 2411. GTE has filed an application for review of the *Sandwich Isles* decision, which is currently pending before the Commission. GTE claims that the areas Sandwich Isles proposes to serve are not unserved but are within or adjacent to areas currently served by GTE. See GTE Hawaiian telephone Company Incorporated Application for review of an Order Granting in Part a Petition for Waiver by Sandwich Isles Communications, Inc., AAD 97-82, filed March 5, 1998.

<sup>79</sup> American Samoa Tel. claims it is unclear whether any waiver is even necessary based upon the *Universal Service Order*, which states:

We agree with Guam Tel. Authority that, under the principles set out in section 254(b)(3) this carrier should be eligible for universal service support and clarify the procedures to be used for any carrier, such as Guam Tel. Authority, that may not have historical costs studies on which to base the set support amounts. Guam Tel. Authority or any other carrier serving an insular area, such as CNMI, that is not currently included in the existing universal service mechanism, shall receive support based on an estimate of [the] annual amount of their embedded costs.

12 FCC Rcd at 8947, para. 318. The paragraph continues as follows:

Such carriers must submit verifiable embedded-cost data to the fund administrator. We anticipate that such carriers will work with the fund administrator to determine the exact support level to which they are entitled.

be eligible for universal service support.<sup>80</sup> The Commission also clarified the procedures to be used for Guam Tel. Authority, and any other insular carriers, that may not have historical cost studies on which to base the support amounts.<sup>81</sup> Specifically, the Commission determined that such carriers will receive support based on an estimate of the annual amount of their embedded costs and are required to submit verifiable embedded cost data to the Administrator.<sup>82</sup>

26. We conclude that we should grant the requested waiver of section 36.611, in part, to allow American Samoa Tel. to be eligible to begin receiving high cost loop support beginning July 1, 1999. As discussed above, because high cost loop support is based on historical data, carriers generally do not receive high cost support based on these data until the beginning of the second calendar year after costs are incurred, although the impact of this lag is mitigated by the rules allowing carriers to file quarterly updates.<sup>83</sup> In the *Universal Service Order*, the Commission noted that insular areas generally have subscribership levels significantly lower than the national average, "largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations."<sup>84</sup> We find that it would further the goals of promoting universal service in insular areas of the United States, to allow American Samoa Tel. to begin receiving high cost loop support without waiting for the lag period to elapse.<sup>85</sup> We find that the *Universal Service Order* supports the waivers granted herein permitting American Samoa Tel. to participate in the high cost support mechanisms and to begin receiving high cost loop support based on average schedule settlements, as discussed above, until verifiable embedded cost data is to be filed with the Administrator.

27. While not opposing petitioners' request for waiver of the historical cost rules, a wireless competitor to American Samoa Tel., American Samoa Telecom, LLC, submitted comments requesting that we require American Samoa Tel. to submit all cost information for

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<sup>80</sup> *Universal Service Order*, 12 FCC Rcd at 8947, para. 318. We note that insular areas have much lower subscribership rates than other parts of the United States. See *Universal Service Order*, 12 FCC Rcd at 8843, para. 121.

<sup>81</sup> *Universal Service Order*, 12 FCC Rcd at 8947, para. 318.

<sup>82</sup> *Universal Service Order*, 12 FCC Rcd at 8947, para. 318..

<sup>83</sup> See *supra* para. 12.

<sup>84</sup> *Universal Service Order*, 12 FCC Rcd at 8838-39, para. 112.

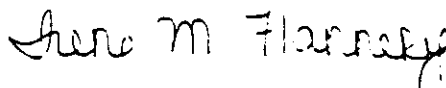
<sup>85</sup> Petitioners report that American Samoa Tel. charges a monthly subscriber rate of \$9.00 for single-party service and unlimited local calling. In addition, in January 1998, American Samoa Tel. implemented a Lifeline rate plan for low-income consumers, with a monthly rate of \$3.75 for local service. American Samoa's annual per capita income is \$3,309 and the median annual household income is \$16,114. More than eighty percent of households in American Samoa subscribe to telephone service provided by American Samoa Tel. American Samoa petition at 4.

the past five years with respect to its network and central office capitalization and operation.<sup>86</sup> We find that American Samoa Telecom has provided no compelling reason why we should impose such a condition on American Samoa Tel.'s waiver and we decline to do so.

#### IV. ORDERING CLAUSE

28. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 5(c), 201, 202, 205, 218-220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, 205, 218-220, and 254, and Sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition of the American Samoa Government and the American Samoa Telecommunications Authority for waiver of Sections 36.611, 36.612, 54.301, 54.303, 69.2, 69.3(a), 69.601, 69.605(c), and the definition of "study area" in Part 36, Appendix-Glossary, of the Commission's rules, 47 C.F.R. §§ 36.611, 36.612, 54.301, 54.303, 69.2, 69.3(a), 69.601, 69.605(c), and Part 36 App., is GRANTED IN PART to the extent described in this Order and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Irene M. Flannery  
Chief, Accounting Policy Division

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<sup>86</sup> American Samoa Telecom comments at 2.





**TERRITORY OF AMERICAN SAMOA**

OFFICE OF THE GOVERNOR  
PAGO PAGO, AMERICAN SAMOA 96799



1900 2000  
Serial: 0559

**TAUESE P. F. SUNIA**  
Governor

**TOGIOLA T. A. TULAFONO**  
Lieutenant Governor

March 23, 2001

Ron Conners  
Director  
North American Numbering Plan Administration  
Neustar, Inc.  
1120 Vermont Ave., N.W., Suite 400  
Washington, D.C. 20005

**Re: Request of the U.S. Territory of American Samoa to Participate  
in the North American Numbering Plan and for Assignment of  
NPA Code 684**

Dear Mr. Conners:

I am writing to request that the U.S. territory of American Samoa be allowed to participate in the North American Numbering Plan ("NANP"), like other U.S. states and territories. To facilitate this participation, I respectfully request the assignment to American Samoa of NPA code 684, which corresponds to the international dialing code now in use.

American Samoa, with a population of approximately 58,000, has been an unincorporated territory of the United States since 1900. The American Samoa Government ("ASG"), composed of an elected governor, legislature, and other self-governing institutions, governs the territory subject to the authority of the U.S. Department of the Interior. As Governor, I function as the Telecommunications Regulatory Commissioner, with authority to regulate the local operations of telecommunications carriers.

The American Samoa Telecommunications Authority ("ASTCA"), an independently operated, quasi-governmental entity that is owned by ASG, is the oldest and largest telecommunications carrier in American Samoa, and provides local exchange, long distance, and wireless service throughout the territory.

In a July 1997 order, the FCC's Common Carrier Bureau strongly encouraged American Samoa to participate in the North American Numbering Plan, in order to facilitate carriers' implementation of rate integration requirements of Section 254(g) of the Communications Act of 1934, as amended ("Act"), and to promote competition and introduction of new services. The Bureau stated:

We note that there are several measures that could be implemented in American Samoa that likely would facilitate the ability of interexchange carriers to integrate their service offerings to American Samoa with their interstate offerings to the mainland and other offshore points. These steps include participation in the North American Numbering Plan, provision of access services to IXCs on a basis comparable to that of LECs in other parts of the U.S. (such as by offering National Exchange Carrier Association access rates), and provision of Feature Group D service if requested by IXCs. Thus, inclusion of American Samoa in the NANP would help carriers integrate American Samoa into their nationwide service plans, billing systems, and switching mechanisms. Implementation of Feature Group D service would provide subscribers with high-quality equal access to providers of interexchange service serving American Samoa. Provision of access services by American Samoa to interexchange carriers on a basis more comparable to such services provided in other parts of the U.S. could help interexchange carriers set rates at integrated levels. Further, these measures could promote the provision of competitive services to American Samoa and stimulate introduction of new services. \* \* \* We encourage American Samoa to submit a complete plan for taking these and any other measures that could help to integrate provision of communications services to American Samoa.

*Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, 12 FCC Rcd 11548, 11558, ¶¶ 21-22 (Com. Car. Bur. 1997).*

In response to that order, ASG filed a Rate Integration Plan for American Samoa on October 1, 1997. In that plan, ASG proposed to remain outside the NANP, due to the high cost of upgrading ASTCA's switches. But ASG proposed to have ASTCA take a number of other steps that would regularize its status under the FCC's regulations, including: (1) reduce its long distance rates and achieve full rate integration of its out-bound domestic long-distance calls; (2) provide interstate access service under the tariffs of the National Exchange Carrier Association ("NECA"); (3) contribute to the federal universal service funds, and receive low-income and high-cost rural support from those funds; (4) obtain an international 214 certificate; and (5) negotiate and, if necessary, arbitrate interconnection arrangements with prospective local competitors pursuant to Sections 251 and 252 of the Act.

Ron Conners  
March 23, 2001  
Page 3

During the three and a half years since the plan was filed, ASTCA has taken all of the steps listed above. See, e.g., *American Samoa Government and The American Samoa Telecommunications Authority*, 14 FCC Rcd 9974 (Accounting Policy Div., Com. Car. Bur. 1999) (granting waivers to enable ASTCA to join NECA and receive universal service funds). At this point, American Samoa is in a position to participate in the NANP.

Without participation in the NANP, ASTCA cannot obtain or use Carrier Identification Codes ("CICs"), and therefore cannot fully implement equal access. As noted above, in 1997 the Common Carrier Bureau strongly encouraged American Samoa to participate in the NANP and urged ASTCA to provide equal access. Over the past few years, ASTCA has continued to upgrade its switches in an effort to provide various FCC-mandated services and to improve service to its subscribers. ASTCA's switching equipment is now capable of providing equal access. Equal access is important to facilitate competition by a new entrant in American Samoa, Blue Sky Communications, and possibly by other interexchange carriers. ASG wants to bring the benefits of long distance competition to the people of American Samoa; and pursuant to the FCC's rules, ASTCA is now required to provide equal access in response to Blue Sky's *bona fide* request. But ASTCA cannot satisfy this requirement unless American Samoa joins the NANP.

Accordingly, I respectfully request authority for the U.S. territory of American Samoa to participate in the NANP, as the Common Carrier Bureau suggested several years ago. To facilitate this, an NPA code needs to be assigned to American Samoa. It would greatly simplify the transition process for residents and businesses in American Samoa, and their relatives and other contacts who call them, if the currently unused NPA code of 684 could be assigned to American Samoa, matching American Samoa's current international "country" code. I understand that this NPA code already has been informally set aside for some years in anticipation of its possible assignment to American Samoa.

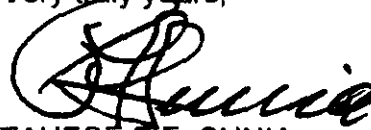
This request is fully supported by precedent. In 1997, when the U.S. territories of Guam and the Commonwealth of the Northern Mariana Islands ("CNMI") began to participate in the NANP, those territories were assigned NPA codes identical to their pre-existing international country codes. American Samoa requests the same treatment.

In sum, permitting American Samoa to participate in the NANP, and assigning the 684 NPA code to American Samoa, would provide benefits to subscribers in American Samoa and throughout the United States. These steps will: (1) facilitate ASTCA's provision of equal access and promote competitive entry; (2) enable U.S. carriers to comply fully with the geographic rate integration requirements of Section

Ron Conners  
March 23, 2001  
Page 4

254(g) of the Act; and (3) minimize the difficulty of the transition for American Samoa consumers and other Americans who call them by assigning an NPA code matching the current country code.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tause", written over a circular stamp or seal.

TAUESE P.F. SUNIA  
Governor

cc: Dorothy Attwood, *Chief, Common Carrier Bureau, FCC*  
John R. Hoffman, *Chairman, North American Numbering Council*  
Aleki Sene, *Executive Director, American Samoa Telecommunications Authority*  
Fagafaga Langkilde, *Vice President, Blue Sky Communications*

**HOGAN & HARTSON**  
L.L.P.

DAVID L. SIERADZKI  
PARTNER  
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July 12, 2001

**RECEIVED**

JUL 12 2001

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Mr. Ron Connors  
Director, North American Numbering Plan Administration  
Neustar, Inc.  
1120 Vermont Ave., N.W.  
Suite 400  
Washington, D.C. 20005

**Re: Request of the U.S. Territory of American Samoa to  
Participate in the North American Numbering Plan and  
for Assignment of NPA Code 684;  
CC Docket No. 96-61**

Dear Mr. Connors:

On behalf of the American Samoa Telecommunications Authority ("ASTCA"), I am writing to follow up on the March 23, 2001 letter from Tauese P.F. Sunia, Governor of the U.S. Territory of American Samoa (a copy is enclosed for your convenience). I write to express our continued hope that the North American Numbering Plan Administration ("NANPA") will expeditiously grant American Samoa's pending request to participate in the North American Numbering Plan ("NANP"), like other U.S. states and territories.

Specifically, American Samoa has requested exclusive assignment of Numbering Plan Area ("NPA") code 684, which corresponds to the international country code now in use there. Following up on a discussion of American Samoa's request during a recent meeting of the Industry Numbering Committee ("INC"), you asked me to provide a written statement explaining why American Samoa is unwilling and unable to share an NPA code with another U.S. Pacific Island territory, such as Guam or the Commonwealth of Northern Mariana Islands ("CNMI"). This letter responds to your request.

Mr. Ron Conners  
July 12, 2001  
Page 2

ASTCA and the American Samoa Government feel very strongly that American Samoa's participation in the NANP is feasible, and should be implemented, *only* if NPA code 684 is assigned exclusively to American Samoa. Such exclusive assignment will serve the public interest in a number of important ways:

- **Adopt a technically feasible solution.** It would not be technically feasible for American Samoa to share the NPA code of either Guam or CNMI. American Samoa is nowhere near Guam or CNMI – American Samoa is in the Southern Hemisphere, while Guam and CNMI are in the Northern Hemisphere. There is no direct cable link between American Samoa and either of these territories: American Samoa utilizes an Intelsat satellite link for connections to all other U.S. points. It would be extremely difficult, if not impossible, for switches located throughout the NANP to properly route and accurately deliver telephone calls, using a single NPA code, to locations both in American Samoa and in another territory thousands of miles away. Moreover, metering calls utilizing a single NPA would be a logistical nightmare, given that American Samoa is east of the International Date Line, while Guam and CNMI are both west of the International Date Line (*i.e.*, when it is Sunday in American Samoa, it is Monday in Guam and CNMI). Instead, exclusive designation of NPA 684 to American Samoa will allow the continued seamless use of its existing network and the accurate delivery and proper completion of calls.
- **Minimize difficulties associated with an NPA transition.** Exclusive use of NPA 684 would greatly simplify the transition process for residents and businesses in American Samoa, and for their relatives, customers, and other contacts who call them. This NPA code matches American Samoa's current international country code. Thus, communication of this change would be streamlined and made easier for calling as well as called parties. Further, these parties would rest assured knowing that NPA 684 will be used only for American Samoa, necessarily minimizing the possibility of costly mis-dials.
- **Equitable treatment of similarly-situated American territories.** The U.S. territories of Guam and the CNMI entered the NANP within the past five years with exclusive assignment of the NPA codes of 671 and 670

Mr. Ron Conners

July 12, 2001

Page 3

respectively, which correspond the respective international calling codes previously used by these territories. American Samoa is similarly situated, and its request should not be treated any differently. Nor should NANPA, at this late stage, ask either of those territories to relinquish its exclusive use of an NPA code.

Finally, I wish to make clear that American Samoa is not willing to relinquish its valuable 684 international country code and enter the NANP unless it receives exclusive assignment of the 684 NPA code. For considerations of simple fairness, ease of technical implementation, and sensible public policy, the NANPA should expeditiously proceed to assign the 684 NPA exclusively to American Samoa. In the meantime, I hope and expect that NANPA will neither assign or reserve NPA 684 to any other location nor take any other action regarding NPA 684 while American Samoa's request is pending.

I appreciate your consideration and look forward to hearing from you. Please contact me if you have any further questions.

Very truly yours,



David L. Sieradzki  
Counsel for the American Samoa  
Telecommunications Authority

Enclosure

cc: Robert Atkinson, *Chairman, North American Numbering Council*  
Dorothy Attwood, *Chief, Common Carrier Bureau, FCC*  
Yog Varma, *Deputy Chief, Common Carrier Bureau, FCC*  
Diane Griffith Harmon, *Acting Chief, Network Services Division, CCB, FCC*  
Cheryl Callahan, *Network Services Division, CCB, FCC*  
Aleki Sene, *Executive Director, American Samoa Telecommunications Authority*  
Fagafaga Langkilde, *Vice President, Blue Sky Communications*

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July 30, 2001  
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Mr. Norman Epstein  
Moderator, Industry Numbering Committee  
Alliance for Telecommunications Industry Solutions  
C/O Verizon  
700 Hidden Ridge  
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Irving, TX 75038

## **Re: Code Sharing between Guam and American Samoa**

Dear Mr. Epstein:

IT&E Overseas, Inc. ("IT&E") submits this letter to oppose any area code-sharing arrangement between Guam and American Samoa. IT&E provides long distance, private line, and Internet access services to consumers and businesses in Guam and the Commonwealth of the Northern Marianas ("CNMI"). IT&E also provides wireless digital PCS services in Guam.

By letter dated March 23, 2001, the Governor of American Samoa submitted a request to the Director of the North American Numbering Plan Administration asking that American Samoa be allowed to participate in the North American Numbering Plan. As part of this request, American Samoa asked that it receive NPA 684, which corresponds to the international dialing code now in use for American Samoa. It is our understanding that the Industry Numbering Committee ("INC") has informally requested American Samoa to consider sharing an area code with Guam.

Area code sharing between Guam and American Samoa would impose prohibitive costs on consumers in both Guam and American Samoa. Both local and long distance service providers would be required to purchase expensive upgrades to, or replace, switching equipment in order to be able determine whether a call should be terminated to a customer in Guam or American Samoa. Instead of analyzing a telephone number at the NPA level, code sharing would require analysis of each dialed telephone number at the "NXX" level (NPA-NXX).



For its part, IT&E would need to incur very large expenses for both its long distance and PCS services. IT&E estimates that the total cost for software upgrades and/or switch replacement would be approximately \$6 million. And these are only IT&E's expenses. The Guam Telephone Authority would likely experience greater levels of expense. Other PCS providers in Guam would also incur expenses, not to mention long distance and local service providers serving American Samoa. The total cost for all these carriers to implement area code sharing for Guam and American Samoa could be many multiples of IT&E's expenses.

At the present time, and for many years, Guam, the CNMI, and American Samoa have been experiencing a very significant economic recession, even when the rest of the U.S. economy was growing rapidly. Most of the costs that carriers would incur in implementing area code sharing would of necessity be passed on to customers in prices for telecommunications services that could make service unaffordable for some consumers and generally reduce demand for telecommunications services. Moreover, imposing these very significant costs on Guam-based carriers would likely place them at a competitive disadvantage with respect to other larger carriers that can more readily absorb these costs and spread them to customers nationwide. In this connection, insofar as area code sharing would be advisable for American Samoa, it may be preferable to consider doing so with Hawaii, where carriers and the local economy may be better able to bear this expense, and which is considerably closer to American Samoa than is Guam.

In any event, there is no reason to believe that incurring the costs of number sharing between Guam and American Samoa is necessary for efficient NPA utilization, or that any benefit to efficient NPA utilization would be justified by the very significant expense involved. In addition, to the best of IT&E's knowledge, significant sharing of area codes between distant islands would be unprecedented. Nor do distant points necessarily share significantly similar calling patterns that could otherwise make area code sharing acceptable.

It also worth noting that in a closely analogous area the FCC has made clear that number conservation goals should not impose significant costs on carriers. Thus, in delegating authority to state commissions to implement thousand-block number pooling trials, the Commission emphasized in several instances that state commissions may not require carriers to implement number portability solely for purposes of participating in number pooling.<sup>1</sup> Similarly, carriers serving Guam and American Samoa should not be

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<sup>1</sup> See, e.g., *California Pub. Utils. Comm'n Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures*, CC Docket No. 96-98, FCC 99-248 (rel. Sept. 15, 1999); *Florida Pub. Service Comm'n Petition to Federal Communications Comm'n for Expedited Decision for Grant of Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, FCC 99-249 (rel. Sept. 15, 1999); *Massachusetts Dept. of Telecom. and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes*, CC Docket No. 96-98, FCC 99-246 (rel. Sept. 15, 1999); *New York State Dept. of Pub. Service Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC

required to incur the very significant expense of area code sharing, even assuming this were necessary in light of area code conservation goals.

For all these reasons, area code sharing between Guam and American Samoa should not be implemented.

IT&E also objects to the fact that carriers and other interested persons in Guam were not apparently requested by the INC to comment on possible consideration of area code sharing between Guam and American Samoa, even if this is only under consideration on an informal basis at this time. Insofar as this issue remains under consideration, IT&E requests that the INC fully inform interested parties in Guam so that they may meaningfully participate in the INC's deliberations.

Sincerely,

Patrick J. Donovan  
Ronald Del Sesto, Jr.

Counsel for IT&E Overseas, Inc.

cc: John M. Borlas, President, IT&E Overseas, Inc.  
Dorothy Atwood, Chief, Common Carrier Bureau  
Diane Griffith Harmon, Acting Chief, Network Services Division  
Cheryl Callahan, Network Services Division, Common Carrier Bureau  
John R. Hoffman, Chairman, North American Numbering Council  
Ron Conners, Director, North American Numbering Plan Administration  
The Honorable Tauese P.F. Sunia, Governor, American Samoa  
Aleki Sene, Executive Director, American Samoa Telecommunications Authority  
Fagafaga Langkilde, Vice President, Blue Sky Communications  
Harry M. Boertzel, Guam Public Utilities Commission  
Vincent P. Arriola, Guam Telephone Authority

From Guam Congressional Delegate

**ROBERT A. UNDERWOOD**

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November 8, 2001

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Dear Chairman Powell:

I am writing to express my concerns to a proposal being considered by the Federal Communications Commission (FCC) and the North American Numbering Plan Administration (NANPA). I understand that there are two proposals being considered regarding American Samoa's inclusion in the NANP. One proposal is to assign a separate area (NPA) code to American Samoa and the other is to have American Samoa share a code with Guam or the Commonwealth of the Northern Mariana Islands (CNMI).

I am strongly opposed to the proposal to have American Samoa share a NPA code with Guam or the CNMI. Rather I am in support Governor Tuae Sunia's request that the NPA code of 684, which corresponds with the current country code, be assigned to American Samoa.

Sharing codes, particularly with jurisdictions like Guam, would be disadvantageous to American Samoa and would cause an undue logistical and financial burden for Guam's long distance service providers and the Guam Telephone Authority (GTA), which is currently owned and operated by the Government of Guam. If subjected to this option, both local and long distance service providers would have to purchase costly upgrades or replace switching equipment. This cost alone for a single provider is estimated to be \$6 million and the cost to upgrade GTA is expected to come at an even higher price. At a time when the territories continue to experience great economic difficulties, such a decision would be detrimental due to the costly conversions these jurisdictions would be expected to encumber.

It also makes no sense to lump the territories together when these jurisdictions are geographically far apart. Guam is some 3,830 miles away from American Samoa, which is also on the eastern side of the International Date Line and 21 hours behind the Chamorro Standard Time Zone, which covers Guam and the CNMI. These factors present additional complications for the billing of calls involving shared NPA codes. Furthermore, I could not imagine that the FCC or NANPA would even consider lumping together Nantucket, Massachusetts with the Channel Islands off California, two jurisdictions which are nearly 2,800 miles apart and share similar population features of

Guam and American Samoa, for the sake of conserving a single NPA code.

During the reauthorization of the Telecommunications Act of 1996, a provision was established to include Guam, the CNMI, and American Samoa in the NANP. While Guam and the CNMI proceeded with integration plans, the government of American Samoa requested to remain outside the NANP citing the high costs of upgrading the American Samoa Telecommunications Authority (ASTA) infrastructure despite the encouragement from the FCC's Common Carrier Bureau to become integrated. Since then, I understand that ASTA has performed upgrades to its telecommunications systems and is now ready for integration to the NANP. Clearly, the prevailing sentiment is to admit American Samoa to the NANP and to grant the assignment of its unique NPA code.

Therefore, I respectfully urge you to support Governor Sunia's request to include American Samoa in the NANP and to assign the NPA code 684 particularly since the FCC was already on record in support of the option in 1996. Additionally, the Industry Numbering Committee of the Alliance for Telecommunications Industry Solutions has recommended support for the assignment of a unique NPA code for American Samoa.

I believe that invoking the option to share a NPA code with jurisdictions such as Guam would set a bad precedence for future NPA code assignments. Your assistance and attention to this request is greatly appreciated.

Sincerely,

<<...OLE\_Obj...>>

Robert A. Underwood  
Member of Congress

cc: Mr. Ron Connors, Director  
North American Numbering Plan Administration

.....  
**Jeannine R. Aguon**

Legislative Assistant

Congressman Robert A. Underwood

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NPA-183

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Veronica M. Ahern  
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November 8, 2001

**VIA EMAIL AND FEDERAL EXPRESS**

Mr. Norman Epstein  
Moderator, Industry Numbering Committee  
Alliance for Telecommunications Industry Solutions  
c/o Verizon  
700 Hidden Ridge  
HQW02H72  
Irving, TX 75038

Re: Assignment of NPA to American Samoa

Dear Mr. Epstein:

Guam Telephone Authority ("GTA"), by its attorneys, hereby submits these comments concerning Industry Numbering Committee ("INC") consideration of a proposal for American Samoa to share an NPA code with Guam.<sup>1</sup>

GTA, an autonomous agency of the Government of Guam, is the incumbent local exchange carrier serving the United States Territory of Guam. As such, it has a unique interest in any proposal for sharing the 671 NPA Code, now assigned solely to Guam. GTA supports the entry of American Samoa into the North American Numbering Plan, but strongly opposes use by

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<sup>1</sup> We note that neither GTA nor the Government of Guam has been formally requested to provide comments. GTA specifically reserves the right to provide additional comments upon formal request.

American Samoa of the NPA presently assigned to Guam.

Although our analysis of the impact of sharing the 671 NPA code with American Samoa is not complete, we have identified several areas of concern for GTA. First, we expect the cost of reprogramming switches and upgrading equipment to be significant. At this time, GTA does not have funds available for such expenditures and will not be able to make the required changes without additional funding.

Second, incoming calls to common number services (*e.g.*, Directory Assistance, Telecommunications Relay Service, etc.) will need to be routed to the proper administration. Issues concerning the mechanics of that rerouting, including payment for the costs incurred, have not been resolved.

Third, common NXX codes in American Samoa and Guam will require NXX code changes, disrupting consumer telephone numbers. Moreover, there does not appear to be an adequate mechanism for deciding whose NXX codes must change.

Fourth, there is great uncertainty regarding traffic routing and, particularly, whether calls routed to American Samoa will be routed through Guam, or vice versa. It is important to bear in mind that Guam and American Samoa, while both parts of the United States, are over 2000 miles apart and do not share a direct telecommunications connection, such as submarine cable. There is little congruence of economic or cultural interests warranting such a direct connection. Therefore, traffic will need to be routed, through Guam, over at least one, and possibly two, satellite links. This raises quality of service issues that will directly impact telephone consumers.

For these reasons, GTA strongly opposes inclusion of American Samoa within the 671 NPA and urges that American Samoa be permitted to use an NPA identical to its existing country code.

Respectfully submitted,

**GUAM TELEPHONE AUTHORITY**

By: Veronica M. Ahern  
Its: Attorney

cc: Honorable Carl T. Gutierrez, Governor of Guam  
John M. Borlas, President, IT&E Overseas, Inc.  
Dorothy Attwood, Chief, Common Carrier Bureau, FCC  
Diane Griffin Harmon, Acting Chief, Network Services Division, Common Carrier

Bureau, FCC

Cheryl Callahan, Network Services Division, Common Carrier Bureau, FCC

Robert Atkinson, Chairman, North American Numbering Council

Ron Conners, Director, North American Numbering Plan Administration

Honorable Tauese P.F. Sunia, Governor, American Samoa

Aleki Sene, Executive Director, American Samoa Telecommunications Authority

Roberta Purcell, Rural Utilities Service



Alliance for Telecommunications  
Industry Solutions

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Committee

A forum of the Carrier Liaison Committee

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Moderator

David Bench  
Assistant Moderator

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December 6, 2001

Mr. Ron Connors  
Director

North American Numbering Plan Administration  
1120 Vermont Avenue, Suite 400  
Washington, DC 20005  
[ron.conners@nanpa.com](mailto:ron.conners@nanpa.com)

Dear Mr. Connors:

This letter is in response to your letter of May 29, 2001 regarding American Samoa's application to join the North American Numbering Plan (NANP) with the assignment of Area Code 684. The INC has received numerous other letters and reviewed contributions related to this matter. The INC concludes that there are no technical reasons preventing American Samoa's entry into the NANP and recommends the assignment of NPA 684.

American Samoa, as a US territory, is subject to FCC rate integration rules that led to the entry of Guam and Commonwealth of Northern Marianas Islands (CNMI) into the NANP. As a result, INC has specifically evaluated the technical merits of assigning a unique NPA code to American Samoa.

The sharing of NPAs is not addressed in the NPA Allocation Plan and Assignment Guidelines, but this concept was introduced via various letters and discussed at length. Many INC participants believe there are technical implementation considerations that would need to be overcome to support the shared NPA code approach. Some of the technical issues which may need to be addressed are:

- Network Connectivity and Call Routing
- Possible upgrades/modifications to equipment and operational procedures.
- Geographic Distances and the crossing of the international dateline.
- Impacts on Operational Support Systems (OSS)

Given the sovereignty of US Territories, it seems unreasonable to force either Guam or CNMI networks to be technically modified by requiring one of those territories to relinquish a portion of the NPA already assigned to it, and bear the cost of such, based on the numbering needs of another territory, as a result of their entrance into the NANP.



Number optimization is a high priority at the INC; however, in the case of American Samoa it is impossible to justify any other approach but the assignment of the requested NPA. No other option is available under the current INC NPA Allocation Plan and Assignment Guidelines. INC does not believe that making such a recommendation is setting any precedent. There are many geographic areas within the NANP whose population alone does not justify the allocation of a whole NPA. Assignment of a complete NPA to American Samoa would not be the first such assignment.

Therefore, after due consideration, the INC recommends that American Samoa be assigned NPA 684 as requested.

Sincerely,

Norman Epstein  
INC Moderator

Rose Travers  
INC Assistant Moderator

cc: Dorothy Atwood, FCC  
Congressman Robert Underwood, Guam  
Ronald Del Sesto, Swidler, Berlin, Shereff, Friedman, LLP  
Veronica Ahern, Guam Telephone Authority  
George Wray, The American Samoa Fund for the Public Interest  
David Sieradzki, Hogan & Hartson  
Doug Birdwise, CSCN  
Ursula Menke, CRTC

## **Exhibit 2**